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<https://doi.org/10.21697/2025.14.2.01>

WHAT PRINCIPLES IN WHAT PROCEEDINGS? THE USE AND DEVELOPMENT OF GENERAL PRINCIPLES OF LAW IN THE ICJ'S ADVISORY VS CONTENTIOUS JURISPRUDENCE

Abstract: The International Court of Justice (ICJ), and its predecessor, the Permanent Court of International Justice (together referred to as the Court), have consistently identified and relied upon general principles of law, the third source of international law codified in Article 38(1)(c) of the ICJ Statute (general principles). Despite their frequent invocation in the Court's jurisprudence, the nature and operation of general principles – particularly in advisory proceedings – remain insufficiently examined. Alongside its contentious jurisdiction, the World Court exercises an advisory function at the request of the organs of the United Nations, raising the question whether general principles are employed differently in advisory opinions than in contentious cases. This article addresses that question through an empirical and inductive analysis of the Court's jurisprudence. It challenges the prevailing assumption that general principles invoked in advisory opinions are inherently more abstract or merely foundational, while those developed in contentious cases are more concrete or operational. Although contentious proceedings continue to dominate the identification and elaboration of general principles, the article demonstrates that advisory opinions contribute to the development of the third source of international law more than it is often acknowledged. In particular, where advisory opinions are adversarial in nature, i.e., arising from underlying legal disputes between States, the Court applies and develops general principles in a manner closely analogous to its approach in contentious cases.

Keywords: General Principles of Law, General Principles, International Court of Justice, Permanent Court of International Justice, Advisory Opinions, Contentious Decisions, Article 38(1)(c) of the ICJ Statute, International Jurisprudence

1. Introduction

This article examines how the International Court of Justice (ICJ) and its predecessor, the Permanent Court of International Justice (PCIJ) (jointly referred to as the Court), have identified, articulated and developed general principles of law recognized by civilized nations (general principles) – the third source of international law codified in Article 38(1)(c) of the ICJ Statute – with particular attention to their use in advisory opinions.¹

Building on prior empirical research identifying 164 general principles relied upon in the Court’s jurisprudence between 1922 up to 2025, this article addresses the question left open. By that earlier work: whether, and in what ways, the Court’s treatment of general principles differs between advisory and contentious proceedings. Advisory opinions form part of the Court’s judicial function and from the earliest practice of the PCIJ, advisory opinions were understood to exert significant normative influence notwithstanding their formally non-binding character.² They have attracted renewed scholarly attention in recent years, particularly regarding their contours, limits, and legal effects.³

A persistent assumption in both scholarship and practice is that general principles invoked in advisory opinions are inherently more abstract or foundational, while those developed in contentious cases are more concrete, procedural, or operational. This article interrogates that assumption.

Although contentious cases continue to dominate the identification and elaboration of general principles, advisory opinions contribute more to the development of the third source of international law than it is acknowledged. This article demonstrates that the nature and extent of this

1 For comprehensive analysis of the identification, articulation and development of general principles by the PCIJ and the ICJ across both advisory opinions and contentious cases see Dordeska, *General Principles of Law Recognized by Civilized Nations (1922–2018): The Evolution of the Third Source of International Law through the Jurisprudence of the Permanent Court of International Justice and the International Court of Justice*.

2 See, inter alia, Ago, “‘Binding’ Advisory Opinions of the International Court of Justice”; Hambro, “The Authority of the Advisory Opinions of the International Court of Justice”; Grieg, “The Advisory Jurisdiction of the International Court of Justice and the Settlement of Disputes between States”; Hudson, “The Effect of Advisory Opinions of the World Court” (noting that “[a]s the Court itself has recognized, even states bound by a judgment are “always free to dispose of their rights”).

3 See generally Galbraith, “Introduction to the Symposium on the Contours and Limits of Advisory Opinions” (situating contemporary debates on the advisory function of the International Court of Justice).

contribution depend not on the advisory function as such, but on the *type* of advisory opinion. In particular, the Court's reliance on general principles differs markedly between adversarial advisory opinions – those arising from underlying legal disputes between States – and non-adversarial advisory opinions addressing abstract legal questions.

This inquiry is conducted against the background of the International Law Commission's (ILC) recent work on general principles, which confirms both the continuing relevance of Article 38(1)(c) and the central role of judicial practice (particularly that of the ICJ) in identifying and developing such principles.⁴

Section 2 outlines the empirical methodology used to identify general principles in the Court's jurisprudence. Section 3 provides an empirical overview of the relative incidence of contentious and advisory proceedings over time, as well as the frequency with which general principles are invoked in each. Section 4 analyses a selection of general principles to challenge prevailing assumptions regarding their abstract or procedural character. Section 5 develops the distinction between adversarial and non-adversarial advisory opinions and examines how this distinction shapes the Court's reasoning and use of general principles. Section 6 draws the article's conclusions.

2. Methodology, Scope and the Identification of General Principles in the Court's Jurisprudence

This article builds on the inductive-empirical methodology previously developed by the author to identify 164 general principles relied upon in the jurisprudence of the PCIJ and ICJ between 1922 and 2025. The earlier research established a systematic, practice-based approach to identify general principle through the Court's own reasoning rather than through abstract doctrinal reconstruction.⁵ The present article applies that methodology to a more focused inquiry: how general principles are identified, articulated, and developed in advisory proceedings as compared to contentious cases.

⁴ United Nations. *Report of the International Law Commission on the Work of Its Seventy-Fourth Session*. UN Doc. A/78/10 (2023).

⁵ Dordeska, "General Principles of Law Recognized by Civilized Nations: Method, Inductive-Empirical Analysis, and (More) 'Scientific' Results".

2.1. Inductive-Empirical Research Design

The methodology adopted is empirical and inductive, rather than deductive and purely doctrinal. It proceeds from the premise that general principles under Article 38(1)(c) of the ICJ Statute are based identified through their use in judicial reasoning, rather than inferred from abstract theory or comparative domestic law alone.⁶ As argued elsewhere, the Court remains the primary institutional actor through which the content and operation of Article 38(1)(c) norms are rendered visible and legally meaningful.⁷

This methodological approach was developed independently in the author's earlier work. More recent work of the ILC reflects a methodologically comparative orientation, in particular in its recognition of decisions of international courts as a means of determinising the existence and content of general principles.⁸ While the ILC articulates an inductive-deductive framework, it does not operationalise this framework through a systematic empirical survey of jurisprudence.⁹ Its conclusions nevertheless underscore the indispensability of judicial reasoning to understanding how Article 38(1)(c) operates in practice.

This approach also responds to a well-known difficulty in the literature: despite extensive scholarly engagement, neither international jurisprudence nor doctrine has developed a unified or transparent method for identifying general principles. Much of the existing scholarship relies on circular citation practices or conceptual assertion, with limited methodological clarity as to *how* particular norms are classified as general principles.¹⁰ The empirical

6 Cf. This understanding accords with the ILC's recognition that general principles may also be formed within the international legal system itself, where they are recognised as intrinsic to that system through consistent practice and judicial affirmation. United Nations. *Report of the International Law Commission on the Work of Its Seventy-Fourth Session*. UN Doc. A/78/10 (2023), Conclusion 7.

7 Dordeska, *General Principles of Law Recognized by Civilized Nations (1922–2018): The Evolution of the Third Source of International Law through the Jurisprudence of the Permanent Court of International Justice and the International Court of Justice*, Chapter 2.

8 United Nations. *Report of the International Law Commission on the Work of Its Seventy-Fourth Session*. UN Doc. A/78/10 (2023), Conclusion 8(1).

9 See United Nations. *Report of the International Law Commission on the Work of Its Seventy-Fourth Session*. UN Doc. A/78/10 (2023), Conclusions 4-9, and 23 *et seq.*

10 Dordeska, *General Principles of Law Recognized by Civilized Nations (1922–2018): The Evolution of the Third Source of International Law through the Jurisprudence of the Permanent Court of International Justice and the International Court of Justice*, p. 194 (noting that the absence of an agreed methodology resulted in persistent disagreements regarding the content, nature and existence of general principles).

approach adopted here is intended to complement – rather than replace – doctrinal analysis by grounding the identification of general principles in observable judicial practice.¹¹

2.2. Identifying General Principles Through Judicial References to ‘Principles’

The core methodological move consists in treating the Court’s explicit reference to ‘principles’ as the primary entry point for identifying general principles within the meaning of Article 38(1)(c) of the ICJ Statute. The working assumption is that when the Court refers to a ‘principle’ as a legal norm, and relies on it in its reasoning, such reference corresponds *prima facie* to a general principle, unless there are clear reasons to exclude it.¹²

To operationalize this approach, every instance in which the PCIJ or the ICJ used the word principle was manually recorded across 231 decisions (judgments and advisory opinions, orders excluded) delivered between 1922 and 2025.¹³ Each reference was then reviewed contextually and classified into one of three categories: (i) true general principles (references where the Court used principle to denote a legal norm of general application, capable of guiding legal reasoning beyond the immediate case); (ii) linguistic

11 Dordeska, “General Principles of Law Recognized by Civilized Nations: Method, Inductive-Empirical Analysis, and (More) ‘Scientific’ Results”, 18-44.

12 “*The initial assumption was thus supplemented with a test that a notion to qualify as a general principle within the meaning of Article 38(1)(c) of the Court’s Statute had to – at least as this study is concerned – be representative both of a norm (in either of the two modalities, i.e., either as ‘principle’ or a ‘rule’) and be at least once attributed the prefix ‘principle’ in the entire Court’s jurisprudence*”. Dordeska, *General Principles of Law Recognized by Civilized Nations (1922–2018): The Evolution of the Third Source of International Law through the Jurisprudence of the Permanent Court of International Justice and the International Court of Justice*, pp. 204 *et seqq.*

13 Dordeska, *General Principles of Law Recognized by Civilized Nations (1922–2018): The Evolution of the Third Source of International Law through the Jurisprudence of the Permanent Court of International Justice and the International Court of Justice*, pp. 216-217; Dordeska, “General Principles of Law Recognized by Civilized Nations: Method, Inductive-Empirical Analysis, and (More) ‘Scientific’ Results”, 20. Since 2018 (year when the research provided in the book concluded), the Court delivered 13 contentious and three advisory opinions, in which approximately it invoked eight new general principles. Decisions so-to-speak ‘richest’ in new (and old) references to general principles include the 2019 *Chagos Archipelago* advisory opinion, 2019 *Jadhav* case, 2021 *Maritime Delimitation (Somalia v. Kenya)*, 2022 *DRC v. Uganda (Reparations)*, and the 2024 *Occupied Palestinian Territory* and the 2025 *Climate Change* advisory opinions. Research for this article was concluded in September 2025. The Court rendered another advisory opinion on 22 October 2025 on the *Obligations of Israel in Relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in Relation to the Occupied Palestinian Territory*. Advisory Opinion. 2025. I.C.J. Reports 2025 (October 22), which is not included.

or rhetorical usages (expressions such as ‘in principle’ or ‘as a matter of principle’, which do not denote a legal norm and were excluded); and (iii) external or derivative principles (references appearing solely within treaty provisions, Party pleadings, or individual opinions, which were likewise excluded).¹⁴ Only references falling within the first category were retained as candidate general principles. This filtering mechanism – developed and applied systematically in earlier work – was designed to minimize false positives while preserving methodological transparency.

A norm qualified as a general principle if it was expressed by the Court as a legal norm and was attributed the label ‘principle’ at least once across the Court’s jurisprudence.¹⁵ This criterion allows the tracing of a principle’s evolution even where the Court’s terminology varies over time, for example, where a norm is initially described as a ‘rule’ and later explicitly recognised as a ‘principle’.

2.3. Relationship to Treaties, Custom, and Judicial Authority

Consistent with the theoretical framework developed in the earlier study, the appearance of a norm in a treaty law does not disqualify it from being a general principle.¹⁶ Certain norms first emerged as judicially identified general principles and were later on codified in treaty form. The decisive factor is not codification, but the Court’s treatment of the norm as a general principle.¹⁷

Conversely, where the Court explicitly declines to recognize a norm as a general principle, that determination is treated as authoritative for the purpose of Article 38(1)(c). For example, in the 2025 *Climate Change*

¹⁴ Dordeska, *General Principles of Law Recognized by Civilized Nations (1922–2018): The Evolution of the Third Source of International Law through the Jurisprudence of the Permanent Court of International Justice and the International Court of Justice*, 209.

¹⁵ Dordeska, *General Principles of Law Recognized by Civilized Nations (1922–2018): The Evolution of the Third Source of International Law through the Jurisprudence of the Permanent Court of International Justice and the International Court of Justice*, 204.

¹⁶ Cf. “[T]reaties may “g[iv]e expression . . . to principles already present in customary international law”, and these customary principles may even “develop under the influence of the [treaty], to such an extent that a number of rules contained in the [treaty] . . . acquire a status independent of it”. *Obligations of States in respect of Climate Change*. Advisory Opinion. 2025. I.C.J. (July 23), para. 312, citing *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*. Judgment. 1986. I.C.J. 14 (June 27), para. 181).

¹⁷ Dordeska, “General Principles of Law Recognized by Civilized Nations: Method, Inductive-Empirical Analysis, and (More) ‘Scientific’ Results”, 25-26.

advisory opinion, the Court clarified that the ‘polluter pays principle’ does not constitute a general principle within the meaning of its Statute. This confirms that the ultimate authority to recognise (or reject) a general principle rests with the Court itself.¹⁸

The same logic applies to doctrines. The ICJ has expressly rejected the elevation of doctrines to the status of sources of international law. In *Jadhav* (2019) and the *Terrorism and Racial Discrimination (Ukraine v. Russia)*, the Court dismissed the ‘clean hands’ doctrine as neither customary international law nor a general principle.¹⁹ Such doctrines were therefore excluded from the dataset.

2.4. Categorisation of General Principles

For analytical purposes, the identified general principles were classified into three categories, reflecting the function they perform in the Court’s reasoning: (i) substantive, (ii) procedural, and (iii) interpretative general principles. Substantive general principles govern rights, obligations, and legal consequences (e.g., reparation, self-determination, and State responsibility). Procedural general principles regulate judicial processes and institutional competence (e.g., equality of Parties, consent as the basis of jurisdiction, *kompetenz-kompetenz*). What is more, interpretative general principles guide the interpretation of legal texts and norms (e.g., good faith, effectiveness, *res judicata*).²⁰

This categorization is analytical rather than ontological: it does not suggest rigid boundaries but rather facilitates an examination of how

18 “Accordingly, the Court does not consider that the ‘polluter pays’ principle is part of the applicable law for the purposes of this Advisory Opinion”. *Climate Change*, Advisory Opinion, 2025 I.C.J., paras. 159, 160.

19 *Jadhav (India v. Pakistan)*. Judgment. 2019. I.C.J. 418 (July 17), para. 61; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russia)*, Judgment, 2024 I.C.J. 78 (January 31), para. 37), by citing *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*. Preliminary Objections. Judgment. 2019. I.C.J. Reports 2019, p. 7 (February 13) and *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*. Judgment. 2023. I.C.J. Reports 2023, p. 51 (March 30).

20 This differentiation is consistent with the ILC’s later observation that general principles may serve to establish primary rights and obligations, regulate procedure, and guide interpretation, thereby contributing to the coherence of the international legal system. United Nations. *Report of the International Law Commission on the Work of Its Seventy-Fourth Session*. UN Doc. A/78/10 (2023), Conclusion 10.

different types of principles operate across contentious and advisory proceedings. The classification also enables the empirical comparison presented in Sections 3-5.

2.5. Scope, Limitations, and Transparency

The research was conducted manually and is necessarily dependent on the author's interpretative judgment. Orders (including provisional measures) were excluded, as they were not treated as 'decisions' for the purposes of this study. The process required the construction of a comprehensive database of decisions and extracted passages referring to general principles.²¹

While the methodology applies consistent criteria, it remains a qualitative assessment subject to human judgment and potential error. Any limitations arising from these choices are acknowledged, and responsibility for them rests with the author.

It should be noted that this study does not proceed by reference to an existing methodological literature on the identification of general principles in advisory opinions. This is not an omission, but a reflection of the state of the scholarship. While general principles have generated extensive doctrinal commentary, that literature rarely makes explicit the methodological criteria by which particular norms are identified as general principles, relying instead on internal citation practices and accumulated authority. Moreover, to the author's knowledge, no systematic study addresses the identification and operation of general principles specifically within advisory opinions.

The absence of an articulated methodological framework in the literature makes a comparative methodological analysis impracticable. This article therefore adopts an inductive, practice-based approach grounded in the Court's jurisprudence itself, drawing on and extending the empirical methodology developed in the author's earlier work.

3. Empirical Overview

Examining both the PCIJ and the ICJ offers a comprehensive picture of how general principles have been applied and developed across the world's

²¹ Dordeska, *General Principles of Law Recognized by Civilized Nations (1922–2018): The Evolution of the Third Source of International Law through the Jurisprudence of the Permanent Court of International Justice and the International Court of Justice*, Digest.

principal judicial body. During its brief 17 years of operation (1922-1939),²² the PCIJ rendered a total of 54 decisions (orders excluded): 28 contentious cases and 26 advisory opinions. The balance between these two types of decisions is nearly equal: 52 per cent contentious and 48 per cent advisory decisions.

The PCIJ's first decision in 1922 was an advisory opinion,²³ followed by two more advisory opinions the same year (and no contentious cases). It rendered an advisory opinion nearly every year except in 1929, 1933, 1934, and 1939.

This is even more so interesting considering that the PCIJ Statute contained no specific provision on advisory opinions: the Court's competence to render them derived directly from Article 14 of the Covenant of the League of Nations, which provided that '[t]he Court may also give an advisory opinion upon any dispute or question referred to it by the Council or by the Assembly'.²⁴ The drafters of the PCIJ Statute – the Advisory Committee of Jurists (ACJ) – proposed to insert a clause relating to advisory opinions into draft, however, their proposal was rejected. In 1929 the Protocol of Amendment introduced four articles on advisory opinions to be added to the PCIJ's Statute; however, this amendment entered into force only in 1936, after the PCIJ had already issued all of its advisory opinions (last ones were delivered in 1935).²⁵ In other words, all of the 26 PCIJ's advisory opinions were rendered under Article 14 of the Covenant.

Figure 1 illustrates the relationship between the contentious and advisory opinions in PCIJ's jurisprudence, showing that the international community at that time was more inclined to seek the Courts legal guidance through advisory opinions than to initiate contentious proceedings.

22 The Court held its last public sitting in December 1939 and issued its final order in 1940. *International Court of Justice. The International Court of Justice: 75 Years in the Service of Peace and Justice*. The Hague: Registry of the International Court of Justice, United Nations, 2021, p. 15.

23 *The Designation of the Workers' Delegate for the Netherlands and the Third Session of the International Labour Conference*. Advisory Opinion. 1922. P.C.I.J. (ser. B) No. 1 (July 31).

24 *Covenant of the League of Nations*. April 28, 1919, Article 14.

25 The last two PCIJ's advisory opinions were *Minority Schools in Albania*. Advisory Opinion. 1935. P.C.I.J. (ser. A/B) No. 64 (April 6); *Danzig Legislative Decrees, 1935; Consistency of Certain Danzig Legislative Decrees with the Constitution of the Free City*. Advisory Opinion. 1935. P.C.I.J. (ser. A/B) No. 65 (December 4). The ICJ Statute later incorporated those provisions *verbatim*, with Article 96 of the UN Charter authorizing not only the General Assembly and the Security Council but also other UN organs and specialised agencies to seek advisory opinions. *Charter of the United Nations*. June 26, 1945, Article 96(2). See also Hudson, Manley O, "The Effect of Advisory Opinions of the World Court.", 630-632.

In contrast, the ICJ rendered 172 decisions between 1948 and 2025:²⁶ 142 contentious cases and only 30 advisory opinions. At the ICJ, only 17 per cent of all decisions were advisory opinion. The ICJ rendered its first decisions in 1948 with an equal number of advisory and contentious proceedings. In 1950, it rendered a record of four advisory opinions.²⁷ By 1951, it rendered seven advisory opinions and seven contentious decisions. During its early years (1948-1962), the ICJ delivered relatively high number of 13 advisory opinions; however, in the following six decades (1963-2025), it issued only 17 more.

Overall, in 77 years of jurisprudence, the ICJ has produced three times more decisions than the PCIJ, but relatively far fewer advisory opinions. While the PCIJ's jurisprudence consisted of nearly half advisory opinions, the ICJ's advisory output represents less than one-fifth of its total. In total, the PCIJ rendered only 3 fewer advisory opinions compared to the ICJ, that is over 30 per cent more advisory opinions compared to the ICJ.

Figure 3 shows a shift from near parity during the PCIJ era to a strong predominance of contentious cases under the ICJ.

Figure 4 shows the progression of advisory opinions and contentious cases issued by both Courts between 1922 and 2025, illustrating a decline in advisory opinions and a corresponding rise of contentious cases from 1963 onwards. The exceptional spike in contentious cases in 2004 corresponds to the *Legality of Use of Force* cases, involving nine separate proceedings between then-Serbia and Montenegro and nine other countries.²⁸

The differing distribution of advisory opinions and contentious cases between the PCIJ and ICJ should not be read as evidence of the diminished importance of advisory opinions compared to contentious cases – rather, when viewed against the PCIJ's practice, it suggests that States started to engage more with the Court, and does not suggest a decline in the normative or interpretative significance of advisory proceedings.

26 The ICJ was established in 1945, commenced its operations in 1946 and issued its first decision in 1948. International Court of Justice. "History", <https://www.icj-cij.org/history>; *Corfu Channel (United Kingdom v. Albania)*, *Preliminary Objections*, Judgment of 25 March 1948, I.C.J. Reports 1948, 15; *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)*, Advisory Opinion of 28 May 1948, I.C.J. Reports 1948, 57.

27 *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania*, Advisory Opinion, 1950 I.C.J. 65 (March 30); *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (Second Phase)*, Advisory Opinion, 1950 I.C.J. 221 (July 18); *International Status of Southwest Africa*. Advisory Opinion. 1950. I.C.J. 128 (July 11); and the *Competence of the General Assembly for the Admission of a State to the United Nations*. Advisory Opinion. 1950. I.C.J. 4 (March 3).

28 The nine other countries were: Belgium, Canada, France, Germany, Italy, the Netherlands, Portugal, United Kingdom, and the United States.

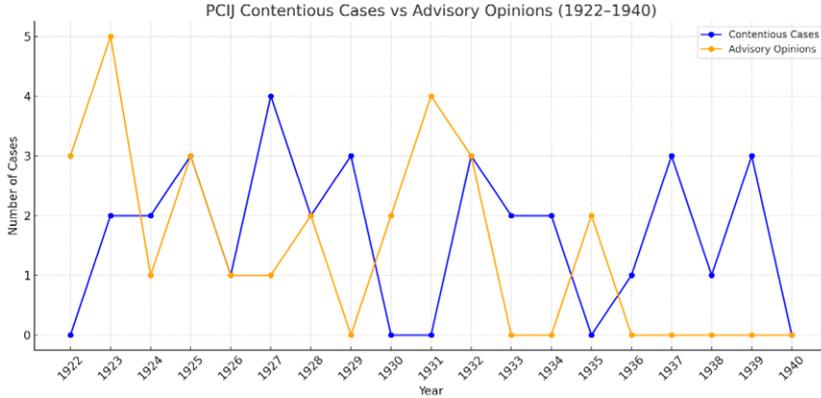


Figure 1: Comparison of the number of contentious cases and advisory opinions decided by the PCIJ between 1922 and 1940

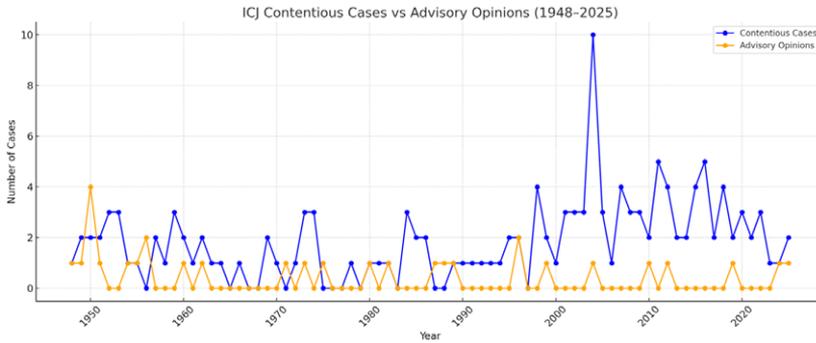


Figure 2: Comparison of the number of contentious cases and advisory opinions decided by the ICJ between 1948 and 2025

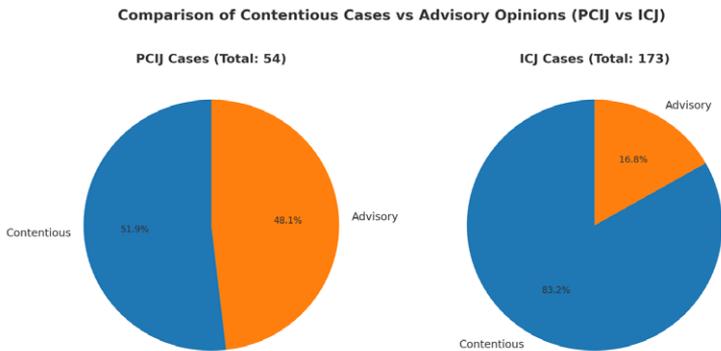


Figure 3: Comparative distribution of contentious cases and advisory opinions between PCIJ and the ICJ

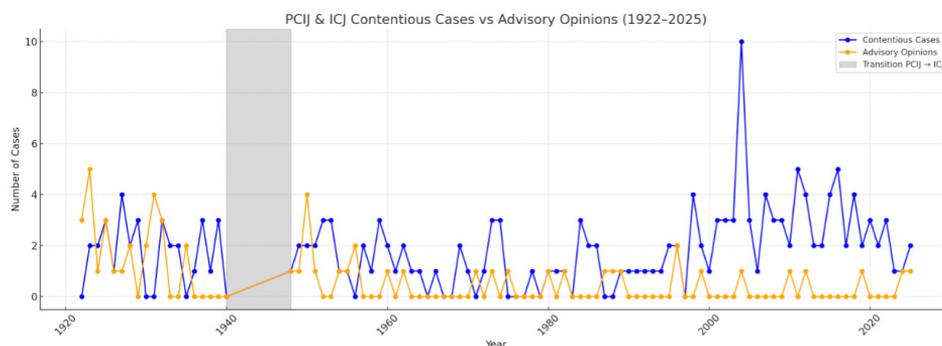


Figure 4: Combined overview of contentious cases and advisory opinions decided by the PCIJ and the ICJ between 1922 and 2025, highlighting the transition period from the PCIJ to the ICJ (1940-1946)

The difference between the PCIJ and the ICJ is attributable not to judicial preference but to procedural circumstances: the type of proceeding depends on requests and disputes brought before the Court, not on the Court’s own choice. Both Courts were (and in the case of ICJ still is) bound by their respective constitutive instrument, namely, Article 14 of the Covenant of the League of Nations for the PCIJ and Article 96 of the UN Charter for the ICJ, which determine who may request an advisory opinion and under what conditions.

3.1. Distribution of General Principles by Topic

From 1922 to 2025, the PCIJ and ICJ relied on a total of 164 general principles (that are, according to this study, within the meaning of Article 38(1)(c) of the ICJ Statute).²⁹ Of these, 86 general principles (52 per cent) appeared exclusively in contentious cases, 32 general principles (20 per cent) only in advisory opinions, and 46 general principles (46 per cent) in both.

Figure 5 shows that over half were relied upon exclusively in contentious cases, while a smaller proportion appear only in advisory opinions. About one-third general principles were used in both types of proceedings.

In this research, general principles are classified into three main categories: substantive, procedural and interpretative general principles. Out of the total of 164, 99 are substantive, 41 procedural, and 24 interpretative general principles.

²⁹ Research concluded in September 2025.

If we further break down the general principles by their type and the type of proceedings there were used (contentious only, advisory only, or both/mix), then we get this result:

Figure 6 illustrates that substantive and procedural general principles predominantly emerge from contentious cases, while interpretative principles are most frequently derived from a mix of both continuous and advisory proceedings.

Substantive general principles are further divided into 11 sub-topics,³⁰ procedural into six,³¹ and interpretative into seven sub-topics.³² Among the substantive general principles, those concerning international humanitarian law were mentioned predominately in advisory opinions, followed by those related to individuals, peoples, and international organisations (70 per cent), treaties (57 per cent), and State sovereignty (53 per cent). Principles related to reparation appeared in 50 per cent of advisory opinions, while those on diplomatic and consular law were mentioned in 20 per cent in advisory opinions. Approximately 17 per cent of substantive general principles related to State responsibility, State succession, maritime law and other areas were mentioned in advisory opinions. No substantive general principles relating to economic relations appear in either PCIJ or ICJ advisory opinions.

Figure 7 shows that general principles are most frequently invoked in advisory opinions concerning international humanitarian law, individuals, peoples, and international organisations, treaties, and State sovereignty, while they appear least in topics such as economic relations and maritime law.

Out of 42 substantive general principles mentioned in advisory opinions, 4 (9 per cent) were confined to in PCIJ jurisprudence. 13 (31 per cent) were mentioned by both Courts, and 25 out of 42 (60 per cent) only by the ICJ.

30 (1) Substantive general principles pertaining to the law of treaties, (2) consular and diplomatic law, (3) the law of State sovereignty, (4) the law of State responsibility, (5) the law of State succession, (6) economic relations, (7) reparations, (8) individuals, peoples and international organisations, (9) international maritime and river law, (10) international humanitarian law, and other substantive general principles.

31 (1) Procedural general principles pertaining to the Court's jurisdiction, (2) those related to the procedure before the Court, (3) functioning of the Court – Court's competence, (4) standing before the Court, (5) facts and evidence, and (6) other procedural general principles.

32 (1) Good faith and *pacta sunt servanda*, (2) general principles specific to treaty interpretation, (3) general principles not specific to treaty interpretation, (4) general principles interpreting customary international law, (5) general principles interpreting international decisions, (6) general principles delineating international law from domestic law, and (7) other interpretative general principles.

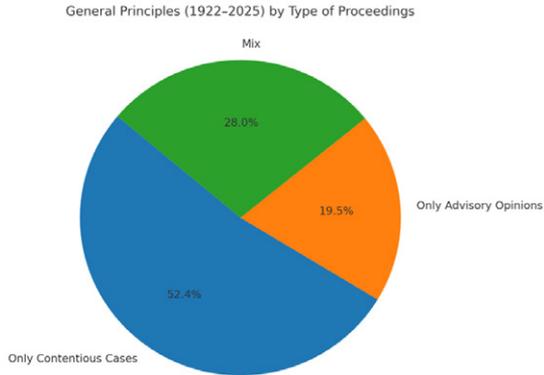


Figure 5: Distribution of general principles identified in the jurisprudence of the PCIJ and ICJ (1922-2025) by type of proceedings

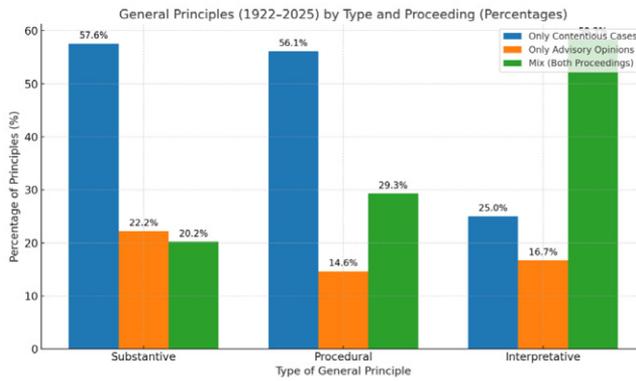


Figure 6: Distribution of general principles (identified by the Court in 1922-2025) by both type and proceeding, expressed as per centages

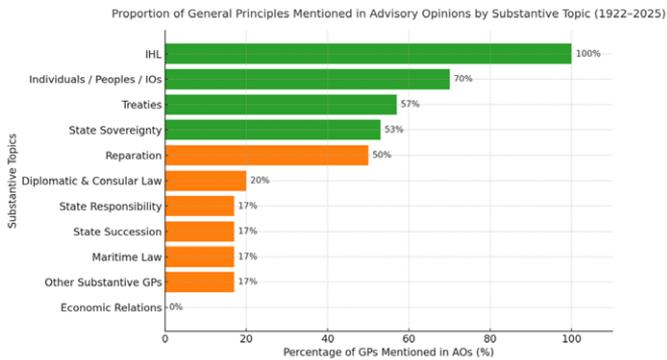


Figure 7: Proportion of general principles mentioned in advisory opinions by substantive topic (1922-2025)

Figure 8 shows that a majority (60 per cent) of such principles appear exclusively in ICJ advisory opinions, while 31 per cent are shared across both Courts, and only 9 per cent are unique to the PCIJ period.

General principles that were mentioned in more than one decision were considered *recurring* general principles, that is, principles that repeat in the Court's jurisprudence.³³ The Court's repeated reliance on the same principles not only reaffirms their validity but also contributes to the development of the principles themselves and the field of international law of which they are a part. A principle that appeared in the PCIJ jurisprudence and later again in the ICJ jurisprudence was also considered recurrent, as the latter is the institutional and jurisprudential continuation of the former.

The most recurring substantive principles in advisory opinions were: (i) the general principle of reparation (appearing in 26 decisions), (ii) State responsibility (appearing in 13 decisions), (iii) State independence and sovereignty (appearing in 12 decisions), and (iv) non-annexation (appearing in 4 decisions).

Figure 9 highlights that the right to reparation is the most frequently cited substantive principle, followed by the principles of State responsibility and State sovereignty. The principle of non-annexation appears exclusively in advisory opinions, unlike the others which are shared with contentious case.

Procedural general principles from all six procedural topics³⁴ also appeared in advisory opinions; there was no procedural theme exclusive to contentious proceedings. Approximately 67 per cent of procedural principles concerning the functioning and competence of the Court, and 60 per cent of those grouped as 'other procedural principles', were mentioned in advisory opinions. Similar proportions apply to principles concerning standing before the Court (50 per cent), procedure (46 per cent), facts and evidence (25 per cent), and jurisdiction (22 per cent).

Figure 10 shows that the majority relate to the functioning and competence of the Court (67 per cent), followed by other standing before

33 See also Đorđeska, *General Principles of Law Recognized by Civilized Nations (1922–2018): The Evolution of the Third Source of International Law through the Jurisprudence of the Permanent Court of International Justice and the International Court of Justice*, 52.

34 Procedural topics classifying 41 procedural general principles are: (1) Court's jurisdiction, (2) procedure before the Court, (3) functioning of the Court/Court's competence, (4) standing before the Court, (5) facts and evidence, and (6) other procedural general principles.

Distribution of Substantive General Principles Mentioned in Advisory Opinions by Court (PCIJ vs ICJ, total = 42)

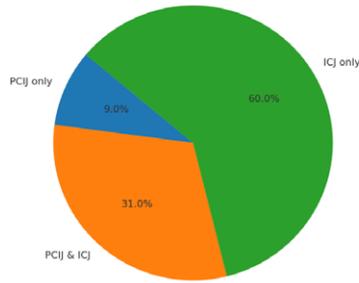


Figure 8: Distribution of substantive general principles mentioned in advisory opinions by Court (PCIJ vs. ICJ, total 42 general principles)

Most Recurring Substantive General Principles Mentioned in Advisory Opinions (1922-2025)

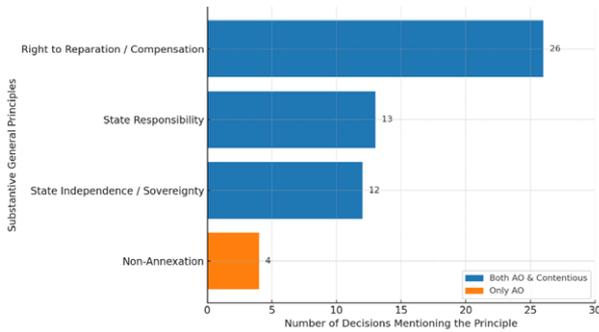


Figure 9: Most frequently recurring substantive general principles mentioned in advisory opinions (1922-2025)

Share of Procedural General Principles Mentioned in Advisory Opinions by Topic (1922-2025)

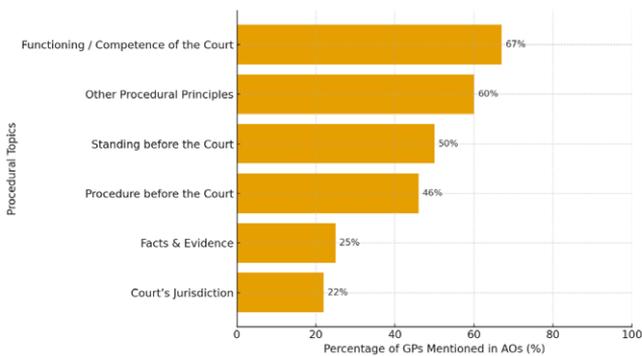


Figure 10: Share of procedural general principles mentioned in advisory opinions by topic (1922-2025)

the Court and ‘other’ procedural principles. Principles concerning jurisdiction and facts and evidence are comparatively less frequent in advisory opinions.

Out of 41 procedural principles, 18 were also cited in advisory opinions, eight (44 per cent) were shared between both Courts, and nine (50 per cent) were identified only by the ICJ.

Figure 11 illustrates the distribution of procedural general principles mentioned only in advisory opinions, distinguishing between those articulated by the PCIJ only, the ICJ only, and those invoked by both courts. Of the 18 procedural general principles identified only in advisory opinions, half (50 per cent) appear exclusively in ICJ advisory opinions, while 44 per cent are common to both the PCIJ and the ICJ. Only a small fraction (5.6 per cent) is confined to the PCIJ alone.

The most recurring procedural principles mentioned in advisory opinions were: (i) the consent of the Parties as the basis of jurisdiction (appearing in 34 decisions), (ii) the burden of proof (appearing in 21 decisions), (iii) diplomatic protection (appearing in 14 decisions), (iv) *kompetenz-kompetenz* (appearing in 13 decision), (v) reciprocity (appearing in 13 decisions), and (vi) exhaustion of domestic remedies (appearing in 11 decisions). These principles were mentioned both in contentious cases and advisory opinions; however, their mentioning in contentious cases highly outnumbers their reference in advisory opinions.

The principle that the Court must remain faithful to its judicial character even in rendering advisory opinions appeared in five advisory opinions, and also, surprisingly due to its nature, in one contentious case. By contrast, certain recurring procedural principles, such as estoppel, *jura novit curia*, the ‘jurisdiction on the date of the filing’, and the Monetary Gold principle, were never mentioned in advisory opinions.

Figure 12 shows that the principle that jurisdiction depends on consent of the Parties appears most frequently overall, followed by the principles if the burden of proof, diplomatic protection, *kompetenz-kompetenz*, and reciprocity. Several procedural principles, such as estoppel, jurisdiction at the time of application, and *jura novit curia*, appear exclusively in contentious cases and never in advisory opinions.

18 out of 24 interpretative general principles were also mentioned in advisory opinions, spanning six of the seven interpretative sub-topics.³⁵ In

35 Topics that subdivide interpretative general principles: (1) good faith and *pacta sunt servanda*, (2) general principles specific to treaty interpretation, (3) general principles not specific to treaty interpretation, (4) general principles interpreting customary international law, (5) general

Distribution of Procedural General Principles Mentioned in Advisory Opinions by Court (PCIJ vs ICJ, total = 18)

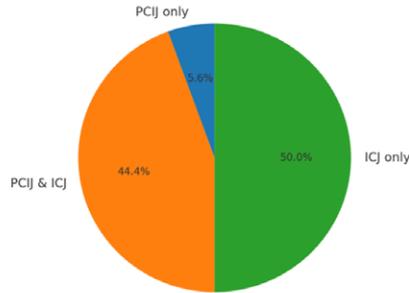


Figure 11: Distribution of Procedural General Principles Across PCIJ and ICJ Advisory Opinions

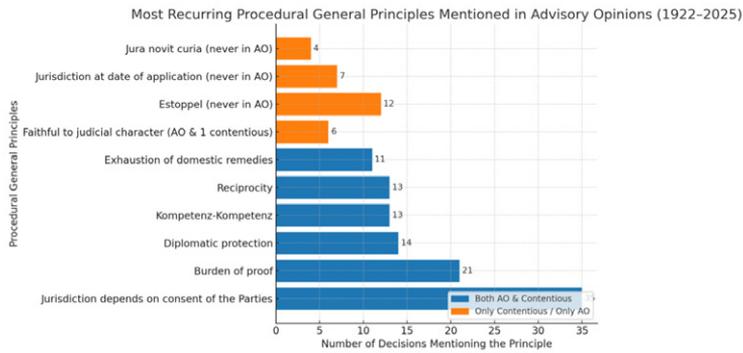


Figure 12: Most frequently recurring procedural general principles mentioned in advisory opinions (1922-2025)

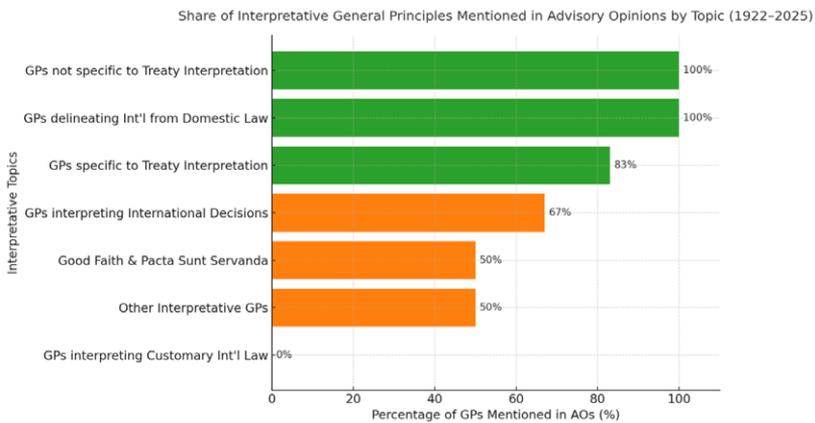


Figure 13: Share of interpretative general principles mentioned in advisory opinion by topic (1922-2025)

the advisory opinions were most common for principles of non-treaty-specific interpretation and those delineating international law from domestic law (all), treaty interpretation (83 per cent), and interpretation of international decisions (67 per cent). Half of the references to the principles on good faith and *pacta sunt servanda* were also cited in advisory opinions. Of these 18 interpretative principles, five (28 per cent) appeared only in PCIJ jurisprudence, nine (50 per cent) in both PCIJ and ICJ, and four (22 per cent) in ICJ jurisprudence alone.

Figure 13 shows that interpretative principles most frequently address issues not specific to treaty interpretation and those delineating international from domestic law (both 100 per cent), followed by principles specific to treaty interpretation (83 per cent). Principles related to interpretation of international decisions and good faith/*pacta sunt servanda* appear less frequently, while none were identified as interpreting customary international law.

Out of these 18 interpretative general principles that were also mentioned in advisory opinions, five (about 28 per cent) were confined to the PCIJ jurisprudence.³⁶ Nine (50 per cent) were mentioned by both Courts, and four (22 per cent) were mentioned only by the ICJ.

Figure 14 shows that half of interpretative principles (50 per cent) appear in the jurisprudence of both Courts, while approximately 28 per cent are unique to the PCIJ and 22 per cent are found only in the ICJ jurisprudence.

The most recurring interpretative principles mentioned in advisory opinions were: (i) *res judicata* (appearing in 38 decisions), (ii) good faith (appearing in 31 decisions), (iii) the ‘ordinary meaning’ principle (appearing in 18 decisions), and (iv) the principle of effectiveness (appearing in 10 decisions).

principles interpreting international decisions, (6) general principles delineating international law from domestic law, and (7) other interpretative general principles.

³⁶ These were (i) the general principle that international obligations cannot transmit to another international agreement unless the international agreement expressly allows; (ii) general principle that if the wording of a treaty provision is not clear, in choosing between several admissible interpretations, the one which involves the minimum obligations for the Parties should be adopted; (iii) general principle that the intention of the Parties is decisive; (iv) general principle that a State is bound to make in its legislation such modifications as may be necessary to ensure the fulfilment of the obligations undertaken; and (v) general principle that the right of giving authoritative interpretation of a legal rule belongs solely to the person or body who has power to modify or suppress it. Dordeska, *General Principles of Law Recognized by Civilized Nations (1922–2018): The Evolution of the Third Source of International Law through the Jurisprudence of the Permanent Court of International Justice and the International Court of Justice*, 571 *et seqq.*

General principles generally applicable to treaty interpretation were referred to mainly in advisory opinions (four out of five mentions in advisory opinions), while the principle that preparatory work need not be consulted when a text is clear appeared in eight decisions (one out of seven mentions in advisory opinions).

Figure 15 shows that *res judicata* and good faith are the most cited interpretative principles, followed by the ordinary meaning rule and the principle of effectiveness. The principle that preparatory work is not needed if text is clear appears less often, while the general principle applicable to treaty interpretation is referenced mainly in advisory opinions.

3.2. Distribution by 'Type' of General Principles

Out of a total of 164 general principles identified with the author's method, Figure 16 below shows that only about one-fifth (20 per cent) of all identified general principles appear solely in advisory proceedings, while the remaining 80 per cent are found in either contentious cases or both types of proceedings. Considering that advisory opinions themselves constitute roughly one-third of all decisions rendered by the PCIJ and ICJ, this indicates a relatively high ratio of unique general principles emerging from non-contentious proceedings. About 24 per cent of these advisory-only principles (eight general principles) were recurring, meaning, the same general principle appeared in two or more advisory opinions.

Of these 33 principles found exclusively in advisory opinions, 70 per cent (23) were substantive, 18 per cent (6) were procedural, and 12 per cent (4) were interpretative.

Figure 17 shows that the majority of the 33 general principles identified only in advisory opinions are substantive principles (70 per cent), while procedural principles account for 18 per cent and interpretative principles for 12 per cent.

Figure 18 below demonstrates that across all categories – substantive, procedural, and interpretative – general principles are predominately identified in contentious or mixed proceedings.

Out of the total of 99 substantive general principles identified in the Court's jurisprudence, about 23 per cent were mentioned only in advisory opinions. Out of the total of 41 procedural general principles, 15 per cent were mentioned only in advisory opinions and of 24 of all interpretative general principles found in the Court's jurisprudence, 17 per cent were mentioned only in advisory opinions.

Distribution of Interpretative General Principles Mentioned in Advisory Opinions by Court (PCIJ vs ICJ, total = 18)

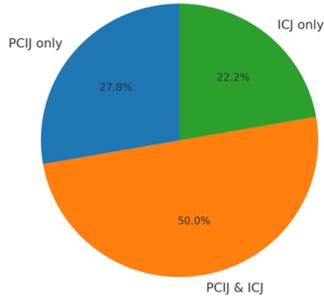


Figure 14: Distribution of interpretative general principles mentioned in advisory opinions by Court (PCIJ vs. ICJ), total 18 general principles)

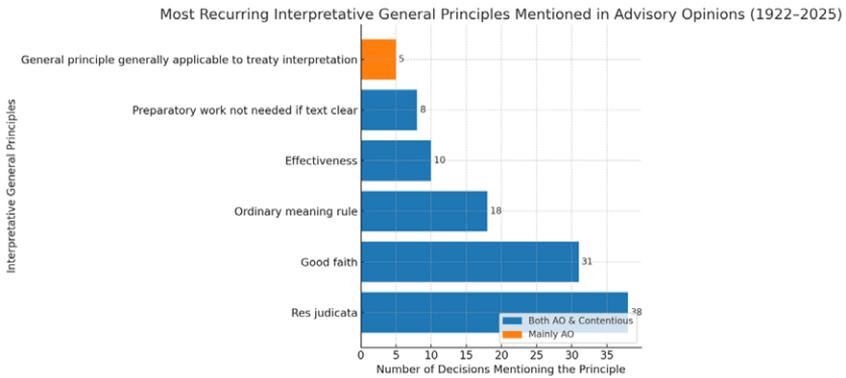


Figure 15: Most frequently recurring interpretative general principles mentioned in advisory opinions (1922-2025)

General Principles Mentioned Only in Advisory Opinions (33 of 164 total)

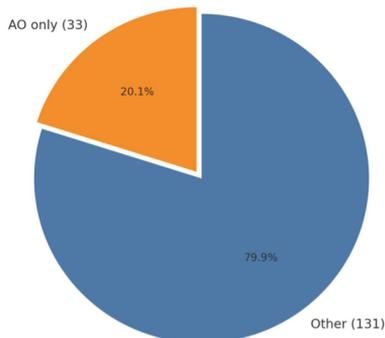


Figure 16: Proportion of general principles mentioned exclusively in advisory opinions (33 out of 164 total)

Composition of 33 General Principles Mentioned Only in Advisory Opinions

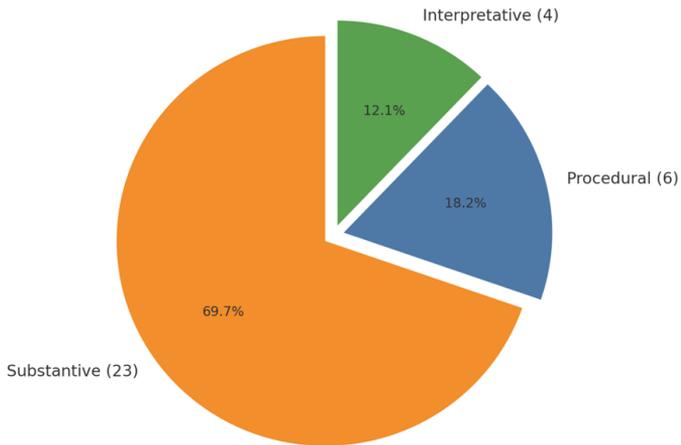


Figure 17: Characteristics of the 33 general principles mentioned exclusively in advisory opinions

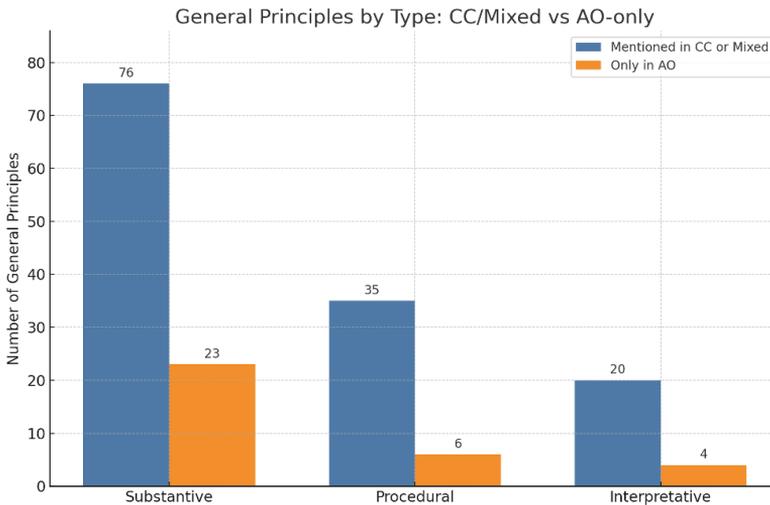


Figure 18: Comparison of general principles by type, distinguishing between those mentioned in contentious or mixed proceedings and those appearing only in advisory opinions

These proportions confirm that advisory opinions play a significant – but selective – role in developing general principles, particularly in relation to the substantive general principles.

4. Analysis of General Principles in the Court's Jurisprudence

4.1. From Abstract Maxims to Concrete Legal Principles

General principles are not confined to maxim-like abstractions – they can also assume a specific and practical form. The Court's jurisprudence demonstrates this through two closely related interpretative general principles. The first is the principle that international law prevails over national law (more abstract), and the second is that considerations of domestic law cannot relive in any event the State of its international obligations (more concrete). The latter was also codified as Article 27 of the Vienna Convention on the Law of Treaties (VCLT).³⁷

The general principle that international law prevails over national law appears exclusively in advisory opinions: two PCIJ and one ICJ advisory opinion.³⁸ In the 1930 *Greco-Bulgarian 'Communities'* advisory opinion, the Court stated that 'it is generally accepted principle of international law that in the relations between Powers who are contracting Parties to a treaty, the provisions of municipal law cannot prevail over those of the treaty'.³⁹ In essence, where a treaty and domestic law collide, the treaty prevails, at least from the standpoint of international law.⁴⁰ Two years later, in the 1932 *Treatment of Polish Nationals* advisory opinion, the PCIJ reiterated that a State cannot evade its own international legal obligations vis-à-vis another State by invoking its constitution, again referring to the 'generally accepted principles'.⁴¹

37 Article 27 of the Vienna Convention on the Law of Treaties provides that '[a] party may not invoke the provisions of its internal law as justification for its failure to perform a treaty'. *Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations*. March 21, 1986. Doc. A/CONF.129/15, Article 27. The Convention was drafted between 1949 and 1969.

38 *Greco-Bulgarian "Communities"*. Advisory Opinion. 1930. P.C.I.J. (ser. B) No. 17 (July 31); *Treatment of Polish Nationals and Other Persons of Polish Origin or Speech in the Danzig Territory*. Advisory Opinion. 1932. P.C.I.J. (ser. A/B) No. 44 (February 4); and *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*. Advisory Opinion. 1988. I.C.J. 12 (April 26).

39 *Greco-Bulgarian "Communities"*, Advisory Opinion, 1930 P.C.I.J., p. 32.

40 *Greco-Bulgarian "Communities"*, Advisory Opinion, 1930 P.C.I.J., p. 35. The ICJ later traced the origins of this norm to the 1872 *Alabama* arbitration and to the PCIJ jurisprudence. *Applicability of the Obligation to Arbitrate*, Advisory Opinion, 1988 I.C.J., para. 57.

41 *Treatment of Polish Nationals*, Advisory Opinion, 1932 P.C.I.J., p. 24.

At the time when this general principle was first invoked, the hierarchy between international and domestic law was still being clarified. It was not yet self-evident, as it is largely today, that international law prevails, at least within the international legal system. Over a half century later, the ICJ reaffirmed this principle in the 1988 *Obligation to Arbitrate* advisory opinion, referring to it as ‘the fundamental principle of international law that international law prevails over domestic law’.⁴²

The related general principle, namely that considerations of domestic law cannot relive in any event the State of its international obligations, has a much broader and practical reach. It was invoked only once by PCIJ in an advisory opinion and seven contentious decisions (all rendered after 1992) by the ICJ.⁴³

In the 1932 *Treatment of Polish Nationals* advisory opinion, the PCIJ held that, ‘according to the generally accepted principles’,⁴⁴ it must decide only based on rules of international law⁴⁵ and that a State cannot evade responsibility under international law by invoking its domestic law (including its constitution).⁴⁶ The Court emphasized that a constitution is ‘essentially a matter of domestic concern’.⁴⁷

Sixty years later, the ICJ described this as a ‘well-established rule in international law’ and noted that States were no longer attempting to elevate their constitution above their international obligations.⁴⁸ Through

42 *Applicability of the Obligation to Arbitrate*, Advisory Opinion, 1988 I.C.J., para. 57.

43 See *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*. Judgment. 1992. I.C.J. 351 (September 11), para. 377; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*. Preliminary Objections. 1996. I.C.J. 595 (July 11), para. 44; *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*. Judgment. 2006. I.C.J. 6 (February 3), paras. 41-42 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*. Judgment. 2007. I.C.J. 43 (February 26), para. 392; *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France)*. Judgment. 2008. I.C.J. 177 (June 4), para. 124; *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America)*. Judgment. 2009. I.C.J. 3 (January 19), p. 3 (abstract) and para. 47; and *Questions Relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*. Judgment. 2012. I.C.J. 422 (July 20), para. 113.

44 *Treatment of Polish Nationals*, Advisory Opinion, 1932 P.C.I.J., p. 24.

45 *Treatment of Polish Nationals*, Advisory Opinion, 1932 P.C.I.J., p. 24.

46 *Treatment of Polish Nationals*, Advisory Opinion, 1932 P.C.I.J., p. 24.

47 *Treatment of Polish Nationals*, Advisory Opinion, 1932 P.C.I.J., p. 23.

48 *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*, Judgment, 1992 I.C.J., para. 377.

the number of contentious proceedings, the Court applied and refined this principle in various contexts.

For example, in the 2006 *Armed Activities (DRC v. Uganda)* case, the Court found that Rwanda's domestic withdrawal of a reservation to an international instrument had no effect internationally, since '[i]n order to have effect in international law, the withdrawal would have had to be the subject of a notice received at the international level'.⁴⁹ Similarly, in the 2008 *Certain Questions of Mutual Assistance in Criminal Matters* case, the ICJ recognized the rule as part of both the VCLT and customary international law,⁵⁰ though it was not directly applicable since the State had relied on domestic law to demonstrate (not avoid) compliance.

In the 2009 *Interpretation of Avena* case, the ICJ restated 'the principle that considerations of domestic law cannot in any event relieve the Parties of obligations deriving from judgments of the Court'.⁵¹ The 2012 *Obligation to Prosecute and Extradite* case reaffirmed the same logic: Senegal could not justify non-compliance with the Convention against Torture by invoking its domestic court's lack of jurisdiction or absence of implementing legislation.⁵²

In comparing these two very similar and closely related norms, namely, the general principle that international law prevails over national law and the general principle that considerations of domestic law cannot relieve in any event the State of its international obligations, one observes that the former one is more hierarchical and abstract, the second is more detailed and concrete its practical expression. The first general principle is also not reflected in Article 27 VCLT but is conceptually broader than Article 27. It also delineates the hierarchy of norms from the international perspective. In contrast, the latter general principle is more detailed and practically applicable – it details the consequences of invoking domestic law and is explicitly embedded in Article 27 VCLT. Over the course of its jurisprudence, the Court indeed had more opportunities to consider and refine it in detail. Considered it more in detail, it also had more opportunities compared to the first principle, as there is more case-law that refers to the second principle.

However, both general principles overlap. Each affirms that international law takes precedence, and that States cannot invoke domestic law

49 *Armed Activities (DRC v. Rwanda)*, Judgment, 2006 I.C.J., paras. 41-42 (emphasis added).

50 *Mutual Assistance (Djibouti v. France)*, Judgment, 2008 I.C.J., para. 124.

51 *Avena Interpretation (Mexico v. United States)*, Judgment, 2009 I.C.J., p. 3 (abstract).

52 *Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, 2012 I.C.J., para. 113.

to justify their non-compliance with international obligations. The second principle may be viewed as a specific derivative of the first, translating an abstract hierarchy into concrete legal responsibility. Accordingly, general principles are not to be reduced to abstract formulations or broad maxims; the third source of international law also has also practical and precise expression and application.

It is worth noting that, in the example provided above, the abstract general principle appears only in advisory opinions, while the more concrete one was invoked almost exclusively in contentious cases. This could create an impression that the Court tends to invoke more maxim-like and abstract general principles in advisory opinions, a theory that needs further testing.

4.2. General Principles in Advisory Opinions are Not Inherently More Abstract

Indeed, it appears that not all maxim-like general principles are confined to advisory opinions. Although earlier examples suggested a pattern where abstract maxims appeared mainly in advisory opinions and more practical ones in contentious cases, this is not a constant. To illustrate, the procedural general principle of *jura novit curia* ('the Court knows the law'⁵³) demonstrates that maxim-like principles can also emerge in contentious proceedings.

First articulated implicitly in the 1927 PCIJ's *Lotus* case, the Court invoked *jura novit curia* (without explicitly mentioning it by name or as a general principle) when it affirmed its independent duty to 'ascertain[] what the international law is', relying not only on the arguments of the Parties but also on precedents, scholarship, and its own reasoning.⁵⁴ The ICJ in 1974 invoked the same rule in the *Fisheries Jurisdiction* case, stating that '[it is] the duty of the Court itself to ascertain and apply the relevant law in the given circumstances of the case';⁵⁵ or, in other words, the Parties do not establish or provide rules of international law (although they do provide the Court with the facts).⁵⁶ It was not until the 1986 *Military and Paramilitary Activities* case that the Court explicitly identified this duty of the Court as a 'principle',

53 In *Land, Island and Maritime Frontier Dispute*, the Court noted that this principle has a Roman law-origin rule on shifting rivers which form frontiers. *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*, Judgment, 1992 I.C.J., para. 311.

54 *Lotus*. Judgment. 1927. P.C.I.J. (ser. A) No. 10 (September 7), p. 31.

55 *Fisheries Jurisdiction (United Kingdom v. Iceland)*. Judgment. 1974. I.C.J. 3 (July 25), para. 17.

56 *Fisheries Jurisdiction (U.K. v. Iceland)*, Judgment, 1974 I.C.J., para. 17.

explaining that *jura novit curia* ‘signifies that the Court is not solely dependent on the argument of the parties before it with respect to the applicable law’⁵⁷ but must consider, on its own initiative, ‘all rules of international law which may be relevant to the settlement of the dispute even if these rules have not been invoked by the Party’.⁵⁸ The ICJ reaffirmed this once more in the 1992 *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*, expressly referring to it as to ‘principle of *jura novit curia*’.⁵⁹

This example demonstrates that although often described as a maxim, *jura novit curia* functions in the Court’s jurisprudence as a concrete procedural principle and plays a decisive role in contentious proceedings. It thereby calls into question the assumption that abstract principles are primarily associated with the Court’s advisory function, while more practical principles are confined to contentious cases.

Another example is the general principle of *res judicata*, a maxim-like general principle that appears in both contentious and advisory proceedings, but predominately in contentious proceedings, with only limited reference in advisory opinions.⁶⁰

In short, the research shows that the distinction between abstract and practical general principles does not align neatly with the advisory-contentious divide. Maxim-like general principles may operate across both domains, depending not on the type of proceeding but on the nature of the legal question(s) before the Court.

4.3. General Principles Primarily Associated with Contentious Cases Are Also Applied in Advisory Opinions

While many general principles originate from the Court’s contentious practice, several have been applied – sometimes in an adapted form – in

57 *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States)*, Judgment, 1986. I.C.J. 14 (June 27), para. 29.

58 *Military and Paramilitary Activities (Nicaragua v. United States)*, Judgment, 1986 I.C.J., para. 266. Thus, the fact that the United States refused to participate in the merits stage of the proceedings did not pose any obstacle for the case to move forward – due to *jura novit curia*, the Court would decide on its own whether Nicaragua’s claim is well-founded in law. *Ibid.*, para. 29.

59 *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*, Judgment, 1992 I.C.J., para. 311.

60 Đorđeska, *General Principles of Law Recognized by Civilized Nations (1922–2018): The Evolution of the Third Source of International Law through the Jurisprudence of the Permanent Court of International Justice and the International Court of Justice*, 606 et seqq.

advisory opinions. The Court's jurisprudence demonstrates a flexible application of general principles, adjusting them to the procedural and institutional context of each case. This will be shown by the general principles of diplomatic protection and that each Party bears its own costs in contentious proceedings.

The general principle of diplomatic protection, described by the PCIJ as the 'elementary principle of international law',⁶¹ was relied upon by the Court in 13 contentions cases (five PCIJ and eight ICJ cases) and in one ICJ advisory opinion, namely, the 1949 *Reparation for Injuries Suffered in the Service of the United Nations*.⁶²

Although diplomatic protection is traditionally linked to contentious proceedings (and is also closely associated with the general principle of exhaustion of domestic remedies⁶³), the Court adapted it in the 1949 *Reparations* advisory opinion with a modified version, namely that of functional protection. The question before the Court was whether the United Nations (UN) or the State of nationality of an injured UN official was entitled to bring an international claim.⁶⁴ The Court held that the UN could bring a claim on behalf of the official and the organization itself, recognizing the 'right of functional protection'.⁶⁵

Although the Court did not label functional protection as a 'general principle', it clearly drew from the general principle of diplomatic protection and adapted it to fit the institutional relationship between an organisation and its officials, which was the question before the Court in that advisory opinion.⁶⁶

61 *Mavrommatis Palestine Concession*. Judgment. 1924. P.C.I.J. (ser. A) No. 2 (August 30), p. 12.

62 Dordeska, *General Principles of Law Recognized by Civilized Nations (1922–2018): The Evolution of the Third Source of International Law through the Jurisprudence of the Permanent Court of International Justice and the International Court of Justice*, 258-260, 336-340, and 543-552.

63 Dordeska, *General Principles of Law Recognized by Civilized Nations (1922–2018): The Evolution of the Third Source of International Law through the Jurisprudence of the Permanent Court of International Justice and the International Court of Justice*, 260-261, 332-334, and 552-557.

64 *Reparation for Injuries Suffered in the Service of the United Nations*, Advisory Opinion, 1949 I.C.J. 174 (April 11), p. 185. The Court found that 'it does not seem that the fact of the possession of the nationality of the defendant State by the agent constitutes any obstacle to a claim brought by the Organization or a breach of obligations towards it occurring in relation to the performance of his mission by that agent' (p. 186).

65 *Reparation for Injuries*, 1949 I.C.J., pp. 185, 187 (holding).

66 *Reparation for Injuries*, 1949 I.C.J., pp. 175-177 (the questions before the Court were whether the UN can bring a claim for reparation against a State for damage done to one of its agents and how should that be handled vis-à-vis the same right by State of agent's nationality).

This example demonstrates that general principles primarily designed for contentious cases (i.e., practical and concrete) can also be repurposed for advisory opinions, maintaining its legal logic while serving a different procedural setting.

Another example is the general principle that each Party bears its own costs in contentious proceedings. As noted by its name and also Article 64 of the ICJ Statute, that codifies it,⁶⁷ this rule applies to contentious proceedings. Yet the ICJ extended it to an advisory proceeding in its 1973 *Review of Judgment No. 158*.

The ICJ's 1973 advisory opinion concerned the review of an administrative tribunal's decision (and not its own decision), and, thus, Article 64 of the Statute could not apply directly. Nonetheless, the Court invoked the 'basic principle'⁶⁸ governing the costs before international tribunals, which provided that 'to the effect that each party shall bear its own in the absence of a specific decision of the tribunal awarding costs (cf. Article 64 of the Statute of the Court)'.⁶⁹ In fact, in the *Review of Judgment No. 158*, the Court for the first time recognized this rule as a general principle.⁷⁰ The Court further clarified that any deviation from this general principle must be expressly decided and accompanied by a reasoned explanation⁷¹). By contrast, the application of the principle itself requires no special justification and may occur implicitly.⁷² Due to the fact that UNAT merely applied the general principle and did not depart from it, the ICJ found no procedural fault in the tribunal's decision.

By doing so, the Court recognized the rule on costs as a general principle, extending it beyond its Statute and applying it to other tribunals. The principle, crafted for contentious proceedings only, thus found expression in an advisory opinion and acquired a broader procedural relevance.

67 'Unless otherwise decided by the Court, each party shall bear its own costs'. *Statute of the International Court of Justice*. October 24, 1945. 1491 U.N.T.S. 199, Article 64.

68 *Application for Review of Judgment No. 158 of the United Nations Administrative Tribunal*. Advisory Opinion. 1973. I.C.J. 166 (July 12), para. 98.

69 *Review of Judgment No. 158*, Advisory Opinion, 1973 I.C.J., para. 98.

70 *Review of Judgment No. 158*, Advisory Opinion, 1973 I.C.J., para. 98.

71 *Review of Judgment No. 158*, Advisory Opinion, 1973 I.C.J., para. 98.

72 *Review of Judgment No. 158*, Advisory Opinion, 1973 I.C.J., para. 98.

4.4. General Principle Common to Both Contentious and Advisory Proceedings

There are several general principles that are common to both continuous and advisory opinions – and are applied in the same form across both. For example, the general principle of equality of Parties (in judicial proceedings) applies not only to contentious litigation but also to advisory proceedings.⁷³ This general principle ensures that where equality ensures that the Parties appearing before the Court – whether States, organizations, individuals, officials – are afforded a fair and balanced opportunity to present their views.

This norm is not expressly mentioned in the Statute or the Rules of the Court but has been consistently recognized and applied by the Court as general principle and an essential competent of good administration of justice.⁷⁴ Throughout the ICJ jurisprudence, it appeared in two contentious cases and three advisory opinions.

The Court first referred to it in the 1952 *Anglo-Iranian Oil (UK v. Iran)* case, where it mentioned ‘the principle of equality’ without elaborating further.⁷⁵ Shortly thereafter, in the 1956 *Judgments of the Administrative Tribunal of the ILO* advisory opinion, the ICJ linked equality to the broader notion of good administration of justice.⁷⁶ In the 1982 *Application for Review of Judgment No. 273* advisory opinion, the Court became more explicitly noted that this is one of the ‘elementary principles of judicial procedure’.⁷⁷ It rooted this general principle in Article 11 of UNAT’s Statute and Article 66 of the ICJ Statute, treating it as a necessary element of ‘the requirements governing the judicial process’.⁷⁸

The general principle of equality of Parties was again reaffirmed in the 1986 *Military and Paramilitary Activities* case, where the Court stated that ‘the equality of the parties to the dispute must remain the basic principle for the Court’.⁷⁹ When the United States declined to appear at the merits stage,

73 See *Application for Review of Judgment No. 273 of the United Nations Administrative Tribunal*. Advisory Opinion. 1982. I.C.J. 325 (July 20), para. 29 (the Court noting that there are ‘various applications of the principle’).

74 Cf. *Military and Paramilitary Activities (Nicaragua v. United States)*, Judgment, 1986 I.C.J., para. 59.

75 *Anglo-Iranian Oil Co. (United Kingdom v. Iran)*. Preliminary Objections. 1952. I.C.J. 93 (July 22), p. 105.

76 *Judgments of the Administrative Tribunal of the ILO upon Complaints Made against UNESCO*. Advisory Opinion. 1956. I.C.J. 77 (October 23), p. 86.

77 *Review of Judgment No. 273*, Advisory Opinion, 1982 I.C.J., para. 59.

78 *Review of Judgment No. 273*, Advisory Opinion, 1982 I.C.J., para. 31.

79 *Military and Paramilitary Activities (Nicaragua v. United States)*, Judgment, 1986 I.C.J., para. 31.

the Court held that equality required both Parties to be treated fairly, but that the non-appearing Party ‘cannot be permitted to profit from its absence’, as this ‘would amount to placing the party appearing at a disadvantage’.⁸⁰ This decision clarified that equality extends even to absent Parties, but not to their strategic advantage. In 1986, the Court further explained that even when a Party does not appear before it on the merits, ‘the principle of equality of the Parties requires that it be given that opportunity [to present arguments on the question of reparation, provided that it doesn’t call into question findings that have become *res judicata*]’.⁸¹ In its 2012 *Judgment No. 2867* advisory opinion, the Court refined its content further, stating that ‘[this] principle must now be understood as including access on an equal basis to available appellate or similar remedies unless an exception can be justified on objective and reasonable grounds’.⁸² It characterized equality as a ‘a requirement of the judicial process’⁸³ and acknowledged structural inequality between the organization and the official involved, stemming from their institutional positions and procedural limitations.⁸⁴

The Court developed this general principle across both its advisory and contentious proceedings, without drawing a distinction between the two. The more limited development of the principle in advisory opinions appears to reflect the smaller number of such proceedings.

4.5. Procedural General Principles Are Not Confined to Contentious Cases

Empirically, far fewer procedural general principles have been invoked in advisory opinions compared to contentious proceedings. This reflects both the smaller number of advisory proceedings compared to contentious ones, and their generally less adversarial nature.⁸⁵ Of approximately five

80 *Military and Paramilitary Activities (Nicaragua v. United States)*, Judgment, 1986 I.C.J., para. 31.

81 *Military and Paramilitary Activities (Nicaragua v. United States)*, Judgment, 1986 I.C.J., para. 284.

82 *Judgment No. 2867 (ILO v. IFAD)*, Advisory Opinion, 2012 I.C.J., para. 44.

83 *Review of Judgment No. 273*, Advisory Opinion, 1982 I.C.J., para. 29, referring to the *Review of Judgment No. 158*, Advisory Opinion, 1973 I.C.J.

84 *Review of Judgment No. 273*, Advisory Opinion, 1982 I.C.J., para. 32.

85 Articles 66 and 67 of the ICJ Statute set out the basic procedure for advisory opinions. While the Court’s Statute and its Rules contain far fewer provisions for advisory than for contentious proceedings, Article 68 of the Statute and Article 102(2) of the Rules explicitly provide that the Court may be guided by procedural rules applicable in contentious cases, insofar as it deems them relevant. Article 68 of the Statute provides that ‘[i]n the exercise of its advisory function the Court shall further be guided by the provisions of the present Statute which apply in contentious cases to the extent to which it recognizes them to be applicable’. Statute of the ICJ,

procedural general principles identified only in advisory opinions,⁸⁶ four were mentioned only once, and the remaining general principle related to administrative rather than judicial procedure.

To illustrate that procedural general principles are not confined to contentious cases only, two examples stand out: the principles of *kompetenz-kompetenz* and the general principle that the jurisdiction of the Court depends on the consent (or will) of the Parties.

The general principle of *kompetenz-kompetenz* affirms that a judicial body has the inherent power to determine the scope of its own jurisdiction.⁸⁷ It is often presumed to apply primarily in contentious cases, where jurisdiction depends on State consent. In contrast, jurisdiction in advisory proceedings flows from the UN Charter and the ICJ Statute. Yet, the Court has relied on this principle in both proceedings.

Kompetenz-kompetenz was invoked in three advisory opinions and ten contentious cases. The first reference came from the PCIJ's 1928 *Interpretation of the Greco-Turkish Agreement* advisory opinion, where the Court affirmed that 'any body possessing jurisdictional powers has the right in the first place itself to determine the extent of its jurisdiction'.⁸⁸ The Court applied this to the Mixed Commission, noting that questions concerning jurisdiction 'must be settled by the Commission itself without action by any other body being necessary'.⁸⁹ In 1962, in the *Certain Expenses of the UN* advisory

Article 68. Article 102(2) of the Rules of the Court states that '[the Court] shall also be guided by the provisions of the Statute and of these Rules which apply in contentious cases to the extent to which it recognized them to be applicable'. *Rules of the Court (1978)*. Adopted April 14, 1978. Entered into force July 1, 1978, Article 102(2).

86 These are: (i) the general principle that immunity has to be expeditiously decided *in limine litis*; (ii) the general principle that the role of the Court in review proceedings is not to retry the case; (iii) the general principle that an organ which intervenes in a procedure which, taken as a whole, is judicial in nature, must observe the rules governing its composition and its functioning; (iv) the general principle that the requirements of the judicial process should be observed not only during the two sets of judicial proceedings but also during the operation of the political organ with quasi-judicial functions; and (v) the general principle of equality of access to courts and tribunals (in administrative proceedings). Dordeska, *General Principles of Law Recognized by Civilized Nations (1922–2018): The Evolution of the Third Source of International Law through the Jurisprudence of the Permanent Court of International Justice and the International Court of Justice*, 488 *et seq.*

87 See e.g., *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras)*, Judgment, 1992 I.C.J., para. 402.

88 *Interpretation of the Greco-Turkish Agreement of 1 December 1926 (Final Protocol, Article IV)*. Advisory Opinion. 1928. P.C.I.J. (ser. B) No. 16 (August 28), p. 25.

89 *Greco-Turkish Agreement (Final Protocol, Art. IV)*, Advisory Opinion, 1928 P.C.I.J., p. 25.

opinion, the ICJ extended this general principle to international organs more broadly, observing that ‘each organ must, in the first place at least, determine its own jurisdiction’.⁹⁰ This reasoning was reaffirmed in the 1996 *Legality of the Use by a State of Nuclear Weapons in Armed Conflict* advisory opinion, where the Court declined to give an opinion, finding that the request from the World Health Organization did not fall within its competence under Article 96(2) of the Charter.⁹¹

Among the ten contentious cases that invoked this general principle, four involved a non-appearing Party.⁹² For example, in the 1986 *Military and Paramilitary Activities* case, the Court held that US, by contesting jurisdiction, ‘acknowledged that the Court had the power to make a finding on its own jurisdiction to rule upon the merits’.⁹³

In sum, while *kompetenz-kompetenz* typically serves to affirm the Court’s ability to rule on its own jurisdiction in contentious proceedings, it has also been invoked in advisory opinions to recognize the analogous power of UN organs to assess their competence.

Another procedural general principle that transcends the advisory-contentious divide is that the Court’s jurisdiction depends on the consent of the Parties. Although designed for contentious proceedings, this general principle has been invoked in one PCIJ and five ICJ advisory opinions, and

90 *Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter)*. Advisory Opinion. 1962. I.C.J. 151 (July 20), p. 168.

91 *Legality of the Use by a State of Nuclear Weapons in Armed Conflict*. Advisory Opinion. 1996. I.C.J. 66 (July 8), paras. 31, 32 (holding).

92 See *Fisheries Jurisdiction (United Kingdom v. Iceland)*. Preliminary Objections. 1973. I.C.J. 3 (February 2); *Aegean Sea Continental Shelf (Greece v. Turkey)*. Judgment. 1978. I.C.J. 3 (December 19); *United States Diplomatic and Consular Staff in Tehran (United States v. Iran)*. Judgment. 1980. I.C.J. 3 (May 24); *Military and Paramilitary Activities (Nicaragua v. United States)*, Judgment, 1986 I.C.J. In such instances, especially where jurisdiction was challenged, the Court determined its jurisdiction under Article 53 of its Statute. *Diplomatic and Consular Staff (U.S. v. Iran)*, Judgment, 1980 I.C.J., para. 12. Article 53 provides that ‘[t]he Court must, before doing so [i.e., when one Party fails to appear before the Court or fails to defend its case, and the other Party calls upon the Court to decide in favour of its claim], satisfy itself, not only that it has jurisdiction in accordance with Articles 36 and 37, but also that the claim is well founded in fact and law’. *Statute of the ICJ*, 1945, Article 53(2).

93 *Military and Paramilitary Activities (Nicaragua v. United States)*, Judgment, 1986 I.C.J., para. 27.

in four PCIJ and 22 ICJ contentious proceedings. The Court has repeatedly described it as a ‘fundamental’⁹⁴ and ‘well-established’⁹⁵ principle.

The PCIJ first invoked it in the 1923 *Status of Eastern Carelia* advisory opinion, observing that ‘no State can, without its consent, be compelled to submit its disputes with other States’ to judicial or arbitral settlement⁹⁶ Although the request was made by the League of Nations, the underlying issues was a bilateral dispute between Finland and the USSR. Due to the fact that the USSR had neither consented to jurisdiction nor was the League’s member, the Court declined to render an opinion. The Court revisited it in 1950 *Interpretation of Peace Treaties* advisory opinion, where some States objected that rendering an opinion without their consent would violate ‘the well-established principle of international law’,⁹⁷ prohibiting adjudication without State consent. The Court rejected their argument, clarifying that the general principle governs contentious, not advisory, proceedings, and that ‘the consent of States, parties to a dispute, is the basis of the Court’s jurisdiction in contentious cases’.⁹⁸ In other words, the Court clarified that the lack of States’ consent does not bar it from rendering an advisory opinion. Although the Court did not rely on this general principle to render its opinion, it did apply it to clarify what the international law was on the matter.

The Court reaffirmed and nuanced its position in the 1975 *Western Sahara* advisory opinion. It held that while the absence of consent may be relevant to the *propriety* of giving an opinion, it does not affect the Court’s competence.⁹⁹ The Court emphasised that it may decline to render an opinion only when doing so would circumvent the general principle of State consent, namely, where an advisory opinion would *de facto* adjudicate a bilateral dispute.

94 *Continental Shelf (Libya/Malta)*. Application by Italy for Permission to Intervene. 1984. I.C.J. 3 (March 21), para. 14; *Application for Revision and Interpretation of 1982 Judgment*, 1985, para. 43; *East Timor (Portugal v. Australia)*. Judgment. 1995. I.C.J. 90 (June 30), para. 26; *Land and Maritime Boundary between Cameroon and Nigeria*, 1998, para. 79; *Genocide Convention (Bosnia v. Serbia)*, Judgment, 2007 I.C.J., para. 76; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*. Judgment. 2011. I.C.J. 70 (April 1), para. 131.

95 *Monetary Gold Removed from Rome in 1943 (Italy v. France, United Kingdom and United States)*. Preliminary Objections. 1954. I.C.J. 19 (June 15), p. 32

96 *Status of Eastern Carelia*. Advisory Opinion. 1923. P.C.I.J. (ser. B) No. 5 (July 23), p. 27.

97 *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (First Phase)*, Advisory Opinion, 1950 I.C.J. 65 (March 30), p. 71.

98 *Interpretation of Peace Treaties*, Advisory Opinion, 1950 I.C.J. 65., p. 71.

99 *Western Sahara*. Advisory Opinion. 1975. I.C.J. 12 (October 16), para. 21.

In the 1989 *Applicability of the Convention on the Privileges and Immunities of the UN* advisory opinion, the Court again clarified that State consent is irrelevant to its jurisdiction on advisory matters, though it may bear on whether giving the opinion is appropriate.¹⁰⁰ Subsequent advisory opinions, including the 2004 *Wall* and the 2019 *Chagos Archipelago* opinions, confirmed that existence of a dispute between States does not convert a request for an advisory opinion into a contentious case.¹⁰¹ The Court reiterated this view in the 2024 *Occupied Palestinian Territory* advisory opinion.¹⁰²

Overall, in its advisory opinions the Court still relied on – interpreted, applied, and developed – a general principle that is in theory reserved for contentious proceedings only. In advisory proceedings this general principle operates not as a bar to jurisdiction but as a factor guiding the Court’s assessment whether it would be proper to exercise its jurisdiction. Although the Court in rendering advisory opinions does not require consent of the States, the Court’s judicial nature still requires respect for this general principle where giving an opinion would circumvent it.

The Court’s analysis of this general principle reveals something significant, namely, that in practice there are two types of advisory proceedings: non-adversarial and adversarial proceedings. Non-adversarial proceedings address questions referred by UN organs with no dispute pending between two or more States on the same matter. Adversarial proceedings likewise address questions referred by UN organs, however, the legal question submitted arises from a ‘legal controversy’ between two or more States.

100 *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations*. Advisory Opinion. 1989. I.C.J. 177 (December 15), para. 31.

101 The Court noted that ‘[d]ifferences of views ... on legal issues have existed in practically every advisory opinion’. *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. Advisory Opinion. 2004. I.C.J.136 (July 9), paras. 46-47. See also *ibid.*, para. 238. The Court found that the dispute between the UK and Mauritius has been longstanding – in 1965, the United Kingdom detached the Chagos islands from the colony of Mauritius before granting Mauritius independence. However, it found that it cannot decline to give the opinion on that ground. *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*. Advisory Opinion. 2019. I.C.J.95 (February 25), para. 90.

102 ‘[T]he Court may have to pronounce on legal issues upon which divergent views have been expressed by Palestine and Israel does not convert the present case into a bilateral dispute’. *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*. Advisory Opinion. 2024. I.C.J. (July 19), para. 34.

The ICJ clarified in its 1950 *Interpretation of Peace Treaties* advisory opinion that this principle does not automatically block the Court from giving an advisory opinion simply because the legal question is also part of a dispute between States.¹⁰³ However, in adversarial advisory proceedings, the Court ensures that in giving the opinion, it does not circumvent the general principle of State consent and ensures that giving an opinion would not effectively transform the advisory proceeding into a contentious one. As the Court explained in 1975 *Western Sahara* advisory opinion:

[a]n instance of this would be when the circumstances disclose that to give a reply would have the effect of circumventing the principle that a State is not obliged to allow its disputes to be submitted to judicial settlement without its consent. If such a situation should arise, the powers of the Court under the discretion given to it by Article 65, paragraph 1, of the Statute, would afford sufficient legal means to ensure respect for the fundamental principle of consent to jurisdiction.¹⁰⁴

If that would occur, the Court would in these types of proceedings rely on its discretion under Article 65 of the ICJ Statute and decline to render the advisory opinion requested.¹⁰⁵

In *Western Sahara*, the Court concluded that Spain would not be affected by the advisory opinion, so the Court rendered this advisory opinion.¹⁰⁶ The Court reached the same conclusion also in the 2004 *Wall*, 2019 *Chagos Archipelago*, and the 2024 *Occupied Palestinian Territory* advisory opinions.

103 *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (First Phase)*, Advisory Opinion, 1950 I.C.J. 65 (March 30), p. 71.

104 *Western Sahara*, Advisory Opinion, 1975 I.C.J., para. 33.

105 Article 65(1) provides that '[t]he Court may give an advisory opinion [...]', which implies that it can decline to respond if giving the opinion would be inappropriate or inconsistent with its judicial character. *Statute of the ICJ*, 1945, Article 65(1).

106 '[T]he legal position of the State which has refused its consent to the present proceedings is not 'in any way compromised by the answers that the Court may give to the questions put to it''. *Western Sahara*, Advisory Opinion, 1975 I.C.J., para. 42. In other words, Spain's non-participation would not impose an obligation or settle a claim for it.

5. The Adversarial and Non-Adversarial Advisory Opinions

The Court relies on Article 38(1)(c) of the ICJ Statute in rendering both advisory opinions and contentions judgments. Therefore, in theory, there should be no difference in how general principles are applied across these two types of proceedings. However, in practice there are slight variations.

The idea that advisory opinions may take two distinct forms, i.e., those that involve disputes and those that do not, can be traced back to the drafting of the PCIJ Statute itself. The ACJ, which prepared a 1920 Hague (and later Brussels) draft, explicitly recognized this possibility. The ACJ proposed adding a provision into the PCIJ Statute on advisory opinions as Article 36bis, to follow Article 36 on Court's jurisdiction. The draft provided that:

[t]he Court shall give an advisory opinion upon any question of dispute of an international nature referred to it by the Council or Assembly. When the Court shall give an opinion on a question of an international nature which does not refer to any dispute that may have arisen, it shall appoint a special Commission of from three to five members. When it shall give an opinion upon a question which forms the subject of an existing dispute, it shall do so under the same conditions as if the case has been actually submitted to it for decision.¹⁰⁷

The ACJ thus envisaged two types of advisory opinions and sought to codify this distinction in the Court's Statute. However, their proposal was rejected by the Sub-Committee of the League of Nations' Assembly, which considered that Article 14 of the Covenant suffices in regulating advisory opinions.¹⁰⁸ The PCIJ Statute as adopted did not include any explicit

107 League of Nations. *Documents concerning the Action Taken by the Council of the League of Nations under Article 14 of the Covenant and the Adoption by the Assembly of the Statute of the Permanent Court of International Justice (excluding the material collected for, and the minutes of, the Advisory Committee of Jurists)*. Geneva: League of Nations, January 1921, p. 180. The second (1920 Brussels) draft was proposed after the consultation with the International Labour Organisation. It amended the first draft by adding the Administrative Council of the International Labour Bureau and the General Labour Conference to the organs able to refer a dispute to the Court. It also added a special sub-paragraph noting that: '[w]hen the question submitted to the Court relates to labour the special commission shall be appointed by the labour section and shall be composed of three judges specially elected for this election, and two judges belonging to the general section'. *Ibid.*

108 The Sub-Committee 'was of the opinion that it should suppress this Article, which had been proposed by the Secretary-General as a result of the changes made by the Council in the text

reference to advisory opinions. Yet, as the subsequent jurisprudence of both the PCIJ and ICJ demonstrates, the distinction envisaged by the drafters (*i.e.*, the existence of two types of advisory opinions), has effectively become a feature of the Court's practice.

This distinction is now reflected, albeit implicitly, in the Rules of the Court. Rule 102(3) provides that '[w]hen an advisory opinion is requested upon a legal question actually pending between two or more States, Article 31 of the Statute shall apply, as also the provisions of these Rules concerning the application of that Article'.¹⁰⁹ This means that when a legal question pending between States is referred to the Court through the UN organs, the advisory procedure acquires an adversarial character.¹¹⁰ Conversely, when the request involves a general legal question without a dispute, the advisory opinion is non-adversarial.

Whether the advisory opinion is adversarial or non-adversarial, influences the Court's method of reasoning, including its treatment and application of the third source of international law. Invoking a general principle in an adversarial advisory opinion closely resembles the Court's use of that principle in contentious proceedings. This generally means that where the Court engages in a detailed analysis of a general principle in contentious proceedings, a similar level of engagement tends to appear in adversarial advisory opinions. In non-adversarial advisory opinions, by contrast, the same principle is more often mentioned only *in passim*. Conversely, where a general principle is referred to only briefly – or not at all – in continuous proceedings, the Court is less likely to engage with it in adversarial advisory opinions, even though it may be examined more fully or deployed differently in non-adversarial advisory opinions.

On the basis of research assessment, 15 ICJ advisory opinions – approximately 50 per cent of all advisory opinions rendered by the ICJ – fall

of the Hague. The Sub-Committee did not consider that there was any necessary relation between the new rules laid down in the Council's draft as to the jurisdiction of the Court and the rules of procedure proposed in this Article. In its opinion, the procedure to be followed before the Court should be the same in every case, without any distinction between the different grounds of its jurisdiction (special Convention of the Parties or pre-existing obligation under a Treaty) but without prejudice to the right of the Parties to modify the procedure in so far as it depends upon the rights which they may renounce'. League of Nations, *Documents concerning the Action Taken under Article 14 of the Covenant*, 1921., p. 506.

¹⁰⁹ *Rules of the Court*, 1978, Article 102(3).

¹¹⁰ Cf Yee, "Forum Prorogatum and Advisory Opinion Proceedings" (analysing the procedural overlap between advisory and contentious jurisdiction).

within the adversarial category, in the sense that they arose from legal disputes between States but were referred to the Court through the UN organs rather than by direct application.¹¹¹ This distinction is crucial for understanding how the Court develops and applies general principles across its jurisprudence.

The general principles of reparation and self-determination exemplify this differentiation. Both have been consistently invoked across advisory and continuous proceedings, yet the depth of the Court's reasoning varies according to the type of advisory opinion. In *de facto* contentious (that is, adversarial) advisory opinions, the Court treats these general principles in a manner analogous to contentious cases, developing their content. In non-adversarial opinions, by contrast, the Court refers to them briefly, often for purposes of clarification rather than detailed analysis.

The general principle of reparation offers one of the clearest illustrations of how the Court identifies, applies, and develops general principles independently of treaty or statutory basis, employing them consistently in both contentious and advisory proceedings. It also illustrates the Court's judicial law-making function, namely, its capacity to derive, articulate, and

111 *Conditions of Admission of a State to Membership in the United Nations*. Advisory Opinion. 1948 I.C.J. 57 (May 28); *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (First Phase)*. Advisory Opinion. 1950 I.C.J. 65 (March 30); *Interpretation of Peace Treaties with Bulgaria, Hungary and Romania (Second Phase)*. Advisory Opinion. 1950 I.C.J. 221 (July 18); *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*. Advisory Opinion. 1951. I.C.J., 15 (May 28); *Voting Procedure on Questions Relating to Reports and Petitions concerning South-West Africa*. Advisory Opinion. 1955. I.C.J. 67 (June 7); *Effect of Awards of Compensation Made by the United Nations Administrative Tribunal*. Advisory Opinion. 1954 I.C.J. 47 (July 13); *Certain Expenses of the United Nations (Article 17, Paragraph 2, of the Charter)*. Advisory Opinion. 1962. I.C.J. 151 (July 20); *Legal Consequences for States of the Continued Presence of South Africa in Namibia (Southwest Africa) notwithstanding Security Council Resolution 276 (1970)*. Advisory Opinion. 1971. I.C.J. 16 (June 21); *Western Sahara*. Advisory Opinion. 1975. I.C.J. 12 (October 16); *Interpretation of the Agreement of 25 March 1951 between WHO and Egypt*. Advisory Opinion. 1979 I.C.J. 73 (December 20); *Legality of the Threat or Use of nuclear weapons*. Advisory Opinion. 1996 I.C.J. 226 (July 8); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. Advisory Opinion. 2004. I.C.J.136 (July 9); *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Request for Advisory Opinion)*. Advisory Opinion. 2010. I.C.J. 403 (July 22); *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*. Advisory Opinion. 2019. I.C.J.95 (February 25); and *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*. Advisory Opinion. 2024. I.C.J. (July 19). Not including the most recent advisory opinion of a similar nature: *Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organisations and Third States in and in relation to the Occupied Palestinian Territory*. Advisory Opinion. 2025 I.C.J. (October 22).

progressively refine principles through its jurisprudence rather than through formal codification.

The analysis of this general principle further reveals how the Court in advisory opinions approaches general principles in the same way as in contentious cases. In contrast, non-contentious advisory opinions refer to them only briefly, without developing them in detail.

The PCIJ first articulated the general principle of reparation in 1927 *Factory at Chorzów* case, declaring that ‘[i]t is a principle of international law that the breach of an engagement involves an obligation to make reparation in an adequate form’.¹¹² The principle was thus identified by the Court rather than created through treaty, and it subsequently became one of the cornerstones of international responsibility. Between 1927 and 2024, the Court invoked it in 24 contentious cases (four PCIJ and 20 ICJ) and three advisory opinions (all ICJ). The advisory opinions in question – *Review of Judgment No. 158* (1973), 2004 *Wall* (2004), and *Legal Consequences* (2024), illustrate both types of advisory procedure: one non-adversarial and two adversarial.

Only decades later was the principle reflected in Article 31 of the 2001 ILC Draft Articles on State Responsibility, confirming the Court’s jurisprudence as customary and foundational. Over time, the Court has referred to reparation as a ‘(general) principle of international law’,¹¹³ a principle of restitution¹¹⁴ or a principle of calculation of damages;¹¹⁵ by 1997, it became a ‘well-established rule of international law’.¹¹⁶ Notably, the PCIJ treated its principle’s status as a general principle as sufficient to confer binding force – an approach that

112 *Factory at Chorzów (Jurisdiction)*. Judgment. 1927. P.C.I.J. (ser. A) No. 9 (July 26), p. 21.

113 See e.g., *Factory at Chorzów (Jurisdiction)*, 1927 P.C.I.J., pp. 21; *Factory at Chorzów (Merits)*. Judgment. 1928. P.C.I.J. (ser. A) No. 17 (September 13), p. 29; *Factory at Chorzów (Claim for Indemnity)*, Judgment, 1928 P.C.I.J. (ser. A) No. 17 (September 13), p. 48 (i.e., the obligation to compensate for the loss sustained as the result of the seizure); *Jadhav (India v. Pakistan)*, Judgment, 2019 I.C.J., para. 138; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*. Judgment. 2022. I.C.J. 13 (February 9), para. 99.

114 *Appeal from a Judgment of the Hungaro/Czechoslovak Mixed Arbitral Tribunal (The Peter Pázmány University)*. Judgment. 1933. P.C.I.J. (ser. A/B) No. 61 (December 15), p. 248.

115 *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*. Judgment. 1997. I.C.J. 7 (September 25), p. 7 (abstract).

116 *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment, 1997 I.C.J., para. 152; *Wall Advisory Opinion*, 2004 I.C.J., para. 152; *Certain Activities carried out by Nicaragua in the Border Area, Compensation*, Judgment, 2018 I.C.J. (February 2), paras. 29-30.

contrasts with the more recent ICJ's tendency to subsume such principles within the framework of customary international law.¹¹⁷

Once the Court establishes jurisdiction over the merits, it considers itself *ipso jure* competent to determine reparation. Across its jurisprudence, it has elaborated the general principle's form (restitution, compensation, satisfaction, and guarantees of non-repetition), method (including lump sum payments, instalments, timing, currency, and recipients), substance (material and moral injury, environmental harm, and interest), and causation, emphasizing that 'it is for the Court to decide whether there is a sufficient causal nexus between the wrongful act and the injury suffered'.¹¹⁸

While the content of the general principle of reparation remains consistent across all proceedings, the depth of its elaboration varies according to the nature of the advisory opinion. In the non-adversarial *Review of Judgment No. 158* advisory opinion, the Court merely restated the principle *in passim*, without explicitly identifying it as such, to delineate the scope of compensation owed to a UN staff member.¹¹⁹ By contrast, in the adversarial *Wall* (2004) and the *Occupied Palestinian Territory* (2024) advisory opinions, the Court treated reparation in precisely the same manner as in contentious cases, identifying full reparation as a legal consequence of internationally wrongful acts, specifying restitution or, where restitution was impossible, compensation:

Israel has an obligation to compensate, in accordance with the applicable rules of international law, all natural or legal persons and populations, where that may be the case, having suffered any form of material damage as a result of Israel's wrongful acts under the occupation.¹²⁰

Accordingly, the form of proceedings – advisory or contentious – does not affect the normative weight of the principle of reparation, but rather the depth of the Court's reasoning. Where an advisory opinion concerns a genuine inter-State controversy, the Court applies and interprets the general

117 See on this Đorđeska, *General Principles of Law Recognized by Civilized Nations (1922–2018): The Evolution of the Third Source of International Law through the Jurisprudence of the Permanent Court of International Justice and the International Court of Justice*, 153 *et seqq.*

118 *Armed Activities (DRC v. Uganda)*, Judgment, 2022 I.C.J., para. 349.

119 The Court said that the purpose of reparation is to 'wipe out all the consequences of the illegal act and re-establish the situation which would, in all probability, have existed if the act had not been committed'. *Review of Judgment No. 158*, Advisory Opinion, 1973 I.C.J., p. 197.

120 *Occupied Palestinian Territory (2024)*, Advisory Opinion, I.C.J., para. 271.

principle substantively, as it would in a judgment. In contrast, when advisory opinion is non-adversarial, the general principle appears only in a brief, interpretative capacity.

The general principle of self-determination of peoples provides another example of how the Court applies and develops substantive general principles across both contentious and advisory proceedings. It confirms that when an advisory opinion is adversarial in nature, the Court engages with the general principle in essentially the same manner as it would in a judgment. This does not apply to non-adversarial proceedings, which typically reflect the opposite approach.

Self-determination was first recognized in the UN Charter (Articles 1(2) and 55)¹²¹ and subsequently reaffirmed in the General Assembly Resolution 1514 (XV) on the Granting of Independence to Colonial Countries and Peoples.¹²² Since 1971, the Court has invoked it in seven advisory opinions and two contentious cases. Its legal content was first defined in the 1975 *Western Sahara* advisory opinion, where the Court stated that '[it is] a right of peoples [...] to determine their future political status by their own freely expressed will'.¹²³

In the 1986 *Frontier Dispute (Burkina Faso/Mali)* case, the Court determined *uti possidetis juris* and self-determination as mutually reinforcing principles governing post-colonial boundary settlement.¹²⁴ Later, in the *East Timor (Portugal v. Australia)* judgment, the Court affirmed that 'the right of peoples to self-determination [...] has an erga omnes character [and] It is one of the essential principles of contemporary international law'.¹²⁵ This confirmed self-determination as both a general principle and an *erga omnes* norm, binding on all States.

121 *Charter of the United Nations*. June 26, 1945, Articles 1(2) and 55.

122 *General Assembly Resolution 1514 (XV)*. 1960.

123 *Western Sahara*, Advisory Opinion, 1975 I.C.J., paras. 55, 70.

124 *Frontier Dispute (Burkina Faso/Mali)*. Judgment. 1986. I.C.J. 554 (December 22), para. 25.

125 *East Timor (Portugal v. Australia)*, Judgment, 1995 I.C.J., para. 29.

Out of the seven advisory opinions invoking self-determination, six were of adversarial nature¹²⁶ and only one non-adversarial.¹²⁷ In the 1971 *Namibia* and 1975 *Western Sahara* advisory opinions, the Court clarified its post-colonial scope of the principle. In the 2004 *Wall* advisory opinion, it treated self-determination as a binding legal entitlement, generating *erga omnes* obligations for all States.¹²⁸ In the 2010 *Kosovo* advisory opinion, the Court again engaged deeply with the general principle, describing it as one of the major developments of international law during the second half of the twentieth century.¹²⁹ Although the Court confined its holding to the legality of Kosovo's declaration of independence, it acknowledged that self-determination 'concerns the right to separate from a State'.¹³⁰

The Court continued to refine this principle in subsequent adversarial advisory opinions. In the 2019 *Chagos Archipelago* opinion, it linked self-determination to the equal rights of peoples and stated that failure to respect it 'constitutes a wrongful act entailing international responsibility'.¹³¹ In the 2024 *Occupied Palestinian Territory* advisory opinion, the Court went further, declaring self-determination as a *jus cogens* norm and a fundamental human right.¹³² It identified four constitutive elements: (i) territorial integrity, (ii) protection against dispersion, (iii) permanent sovereignty over natural resources, and (iv) freedom to determine political status,¹³³ and affirmed that 'all States have a legal interest in protecting that right'.¹³⁴

In each of these adversarial advisory opinions, the Court reasoned with the same depth and precision as in contentious cases. By contrast, in the 2025 *Climate Change* advisory opinion – a non-adversarial proceeding concerning general legal consequences of climate change – the Court

126 *Legal Consequences for States of the Continued Presence of South Africa in Namibia (Southwest Africa) notwithstanding Security Council Resolution 276 (1970)*. Advisory Opinion. 1971. I.C.J. 16 (June 21); *Western Sahara*, Advisory Opinion, 1975 I.C.J.; *Wall Advisory Opinion*, 2004 I.C.J.; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo (Request for Advisory Opinion)*. Advisory Opinion. 2010. I.C.J. 403 (July 22); *Chagos Archipelago*, Advisory Opinion, 2019 I.C.J.; *Occupied Palestinian Territory (2024)*, Advisory Opinion, I.C.J.

127 *Climate Change*, Advisory Opinion, 2025 I.C.J.

128 *Wall Advisory Opinion*, 2004 I.C.J., paras. 88, 118, 159.

129 *Kosovo Advisory Opinion*, 2010 I.C.J., para. 82.

130 *Kosovo Advisory Opinion*, 2010 I.C.J., para. 83.

131 *Chagos Archipelago*, Advisory Opinion, 2019 I.C.J., para. 177.

132 *Occupied Palestinian Territory (2024)*, Advisory Opinion, I.C.J., para. 233.

133 *Occupied Palestinian Territory (2024)*, Advisory Opinion, I.C.J., para. 237-241 *et seqq.*

134 *Occupied Palestinian Territory (2024)*, Advisory Opinion, I.C.J., para. 232.

referred to self-determination only once, noting that ‘since these principles [permanent sovereignty over natural resources, territorial integrity, etc.] are closely connected with the right to self-determination, sea-level rise is not without consequences for the exercise of this right’.¹³⁵ Here, the general principle served a contextual and clarifying purpose, mirroring the lighter treatment of the reparation principle in the 1973 *Review of Judgment No. 158* advisory opinion.

In conclusion, the general principle of self-determination follows the same pattern as the principle of reparation: in adversarial advisory opinions, the Court develops and applies the principle in the same manner as in contentious cases, whereas in non-adversarial advisory opinions it is referred to only briefly, incidentally, and *in passim*, as a contextual support. Accordingly, the manner in which a general principle is articulated (and the depth to which it is scrutinised and developed – depends not on the general principle itself, but on the nature of the advisory opinion.

6. Conclusion: General Principles Across Contentious and Advisory Proceedings

The findings of this study point to a single overarching conclusion: general principles, as a source of international law under Article 38(1)(c) of the ICJ Statute, operate along a continuum across the Court’s contentious and advisory functions. While they are more frequently identified in contentious proceedings, general principles also appear – often in equally significant ways – in the Court’s less-frequent advisory proceedings.

This article has demonstrated that general principles are far more than an abstract maxim. Even where they retain a maxim-like character, their use is not confined to advisory opinions. Rather, general principles are invoked, applied, and developed throughout the Court’s jurisprudence, irrespective of whether proceedings are contentious or advisory.

The analysis further shows that general principles traditionally associated with contentious proceedings may also be applied – sometimes in an adapted form – within advisory opinions. Procedural general principles, in particular, are not the exclusive domain of contentious cases; they play an important and often underappreciated role in advisory proceedings as well.

135 *Climate Change*, Advisory Opinion, 2025 I.C.J., para. 357.

A broader and more nuanced pattern thus emerges. It is not the type of general principle that determines how the Court employs it, but rather the type of advisory proceedings. In adversarial advisory opinions, which often reflect underlying legal disputes between States, general principles are identified, interpreted, and refined in a manner closely analogous to their treatment in contentious cases. In non-adversarial advisory opinions, by contrast, those same general principles may appear only in passing. The reverse is also observable: where contentions and adversarial proceedings engage only superficially with a general principle – or do not rely on it at all – non-adversary advisory opinions examine it in greater depth and detail.

Recognizing this dynamic is essential to understanding the dual nature of the Court's jurisprudence and the evolving function of general principles within it. The ICJ, much like its predecessor, does not merely apply existing law. Through its invocation, clarification and development of general principles – across both contentious and advisory proceedings – it actively contributes to the progressive development of international law.

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